# The Solicitors' Journal

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## Current Topics.

### Taxing Masters.

In connection with the appointment of Mr. Trumpler as a Taxing Master to fill the vacancy created by the retirement of Master Cave, it may be of interest to recall that the designation "Taxing Master" dates from 1842. By the Court of Chancery Act of that year (5 & 6 Vic., c. 103) the Six Clerks, who had played at one time a great part in the working of the machinery of the old Court of Chancery but who, so it was alleged, had become a serious clog on the wheels of justice, were abolished, and various new offices created. By s. 4 of the Act the first Taxing Masters—six in number—were appointed by name and thus secured themselves what may be termed a statutory immortality, in addition to the very handsome salary of £2,000 a year. These were to act in cases coming before the Court of Chancery. In the common law courts, the Masters were the taxing officials and they so continued till comparatively recent days, till, in fact, by the rules of the Supreme Court, 1902 and 1903, the Taxing Masters were amalgamated with the Central Office and became Masters of the Supreme Court. The appointment of Taxing Masters lies with the Lord Chancellor, and the qualifications for the appointment are set out in the Judicature Act, 1925, which, reproducing earlier enactments, provides that a person to be eligible for the office must be a practising solicitor of at least ten years' standing, or must be an admitted solicitor of not less than ten years' standing, who has during the ten years immediately preceding the appointment been employed in certain defined posts in the Royal Courts of Justice, or, thirdly, a Master of the Chancery Division, or fourthly, the Official Solicitor provided he has been a practising solicitor of not less than ten years' standing. The collocation of qualifications seems a little odd, but this much is clear, that what is required in the appointee is a familiarity with the kind of work that will fall to him as a Taxing Master.

### Taxation in Early Days.

When precisely the practice of having a solicitor's bill of costs subjected to the critical examination of an official of the court does not appear to be very definitely ascertained, and indeed the subject of costs generally is not so well defined as we might like. There is something about it in "Blackstone's Commentaries," where, having dealt with judgments, the author adds that "costs are a necessary appendage, it being now as well the maxim of ours as of the civil law, that "*victus victori in expensis condemnandus est*," though the common law did not professedly allow any costs, the amercement of the vanquished party being his only punishment. According to "Blackstone," the first statute which gave costs *eo nomine* to the demandant in a real action was the Statute of Gloucester, 6 Edw. I, c. 1. It was only later that the defendant became entitled to his costs if he succeeded. The taxing and "moderation" of the bill of costs was carried out by the prothonotary or other proper officer of the court. Sir William Holdsworth in his "History of English Law," points out that a pauper plaintiff who failed in his action could not be compelled to pay costs, for the very cogent reason that he had not the wherewithal to do so, but to show disapproval of his temerity in bringing an action which turned out to be unfounded he was to suffer such punishment as appeared to the judges to be reasonable. Sir William goes on to state that, in the seventeenth century the practice appears to have been to tax the costs in such cases and if, as was invariably the case, they were not paid, the court adjudged the plaintiff to be whipped. After the Revolution this practice was discontinued, Chief Justice Holt setting his face against such procedure. Nowadays, as we all know, the poor person in litigation is treated more benevolently.

### Solicitor's Costs in Bankruptcy.

In a previous issue we discussed the effect of the decision of the Divisional Court in *In re a Debtor*, No. 29 of 1931 (*ante*, p. 530), which was affirmed on 30th October by the Court of Appeal. It will be remembered that the county court judge had upheld a debtor who objected to the taxation of the petitioning creditor's bill of costs on the ground that the latter's solicitor was not entitled to practise in the county court in its bankruptcy jurisdiction without signing the court roll. The learned county court judge had been impressed by Ord. 54, r. 7, which forbade a solicitor to appear in the county court without first signing a book kept for that purpose by the registrar. The Divisional Court allowed an appeal from the decision of the county court judge on the ground that the right of any attorney or solicitor to practise in the Court of Bankruptcy given by s. 70 of the Bankruptcy Act, 1869, was retained by s. 151 of the Act of 1883, now, in effect, re-enacted by s. 152 of the Act of 1914. That section provided that nothing in the Act was to take away or affect any right of audience that any person may have had at the commencement of the Act. While agreeing with the judgment of Mr. Justice Clauson, the Master of the Rolls desired to add a few words on a point which he thought might be amplified. It had been argued that s. 151 referred to the right of audience only, and did not deal with the right to practise. That there could not be a right of audience divorced from a right to practise was stressed by the Master of the Rolls, who cited *Ex parte Broadhouse*, L.R. 2 Ch. 655, which decided that the clerk of a firm of solicitors, who was himself a solicitor, was not entitled to appear for his employers' client in showing cause against an adjudication, when the name of his employers' firm and not his own was on the record. In other words, he cannot appear for anyone who is not his own client. There is on record, however, at least one case of a solicitor who had no client at all being granted a right of audience. This is described by Kekewich, J., in *Marsh* v. *Joseph* [1897] 1 Ch., at p. 230, where he said: "I remember a solicitor . . . coming into the Rolls Court one morning and addressing Lord Romilly when he took his seat. Lord Romilly told him he could not be heard, but could instruct one of the counsel in court. His reply was: 'I

cannot instruct counsel, I have no client, but I wish to call your lordship's attention to the fact that an order has been improperly made.' I know that Lord ROMILLY listened to the application and stayed an order." Whether circumstances of similar urgency are likely to recur may be doubted, and in any case the inducement for a solicitor to act without instructions from anyone at all seem to be totally absent.

### Liability for a Contractor's Negligence.

ALTHOUGH an employer is responsible for any damage caused by the negligence or other wrongdoing of his servant, it is a general principle of law that he is not so liable for the acts of an agent who is an independent contractor. But there are exceptions to this rule, one of which is illustrated by the decision of the Court of Appeal in *Honeywill & Stein Ltd.* v. *Larkin Bros. Ltd.* (*The Times*, 21st October), reversing a decision of Bennett, J. sitting as an additional judge of the King's Bench Division. The court practically adopted the statement in "Salmond on Torts" (7th Ed., at p. 135), that the tendency of legal development is in the direction of extending rather than restricting the vicarious liability of independent contractors. In the present case the plaintiffs, who were experts in acoustics, had fitted a sound reproduction apparatus in a London cinema, and having finished the work, obtained permission of the cinema company owning the theatre to take photographs of the interior for business purposes. They then instructed the defendants, who were commercial photographers, to take the required pictures. The defendants' operator at first attempted to take photographs by ordinary light, but, as might have been expected in a cinema, these were failures, and he made another visit armed with a flashlight apparatus. Unfortunately, he ignited the magnesium powder too close to the curtain, the explosion set it on fire, and damage to the extent of £260 was done before it could be extinguished. The cinema owners at once threatened the plaintiffs with an action, and they paid the amount in full and then sued the defendants. The defence in effect was, "we may have been liable to the owners in trespass, but as we were independent contractors, you were not liable and therefore we are not liable to you." But the main exception to the general rule is that where the work contracted for involves a probable danger to the public, or to the owners of the property on which it is to be done, the employer cannot escape the consequences of any negligence by the contractor. Not only must special precautions be insisted on, but they must be observed, at the peril of the employer. The point occurs incidentally in the great case of *Dalton* v. *Angus*, 6 App. Cas. 740, per Lord BLACKBURN, at p. 829, and per Lord WATSON, at p. 831, where the latter said: "In cases where the work is necessarily attended with risk, he (the employer) cannot free himself from liability by binding the contractor to take effectual precautions. He is bound to see that the contract is performed and is, therefore, liable, as well as the contractor, to repair any damage that may be done." BENNETT, J., dismissed the action because he held that the operation of taking a flashlight photograph was not necessarily risky, and was normally perfectly harmless. The Court of Appeal, in differing from him, held that to take such photographs in a picture theatre in close proximity to the curtain was a dangerous operation for the consequences of which the employers could not evade responsibility.

### Brawling in Divine Service.

As we anticipated in a previous note (77 SOL. J. 38), the King's Bench Division has allowed the appeal of the police from the decision of the Penzance bench in the case from St. Hilary, Marazion, dismissing summonses against twelve persons charging them with brawling and disturbing the service in church by continuously signing hymns, and has remitted the case to the magistrates with a direction to convict (*Matthews* v. *King*, *The Times*, 1st November). The Court (Lord HEWART, C.J., and AVORY and LAWRENCE, JJ.) were unanimously of opinion that the appeal was entitled to succeed, but the case being of importance, put their judgment into writing. The considered judgment was delivered by LAWRENCE, J. The charge against the defendants was that they disturbed the officiating clergyman, Canon CARR, the vicar of Penzance, while ministering or celebrating divine service in the church contrary to s. 2 of the Ecclesiastical Courts Jurisdiction Act, 1860. The dismissal by a majority of the justices of the summons was sought to be supported on two grounds, first that the service which was being held was the celebration of a sacrament, namely, Holy Communion, and that this was not a "divine service" within the Act, and secondly that it was not a "divine service," because it included certain rites and ceremonies not expressly prescribed by the Prayer Book, and omitted the reading of the Ten Commandments, and the long exhortation (the latter now seldom heard in any church). The disturbance was admitted, and if the charge had been brought under another section or the summons had been differently worded, the first ground of defence could not possibly have been raised. The court held that the words "divine service" were used in the widest sense and included the celebration of a sacrament. If there was explicit mention of the latter in apparent contrast to other forms of divine service, it was because Baptism and Holy Communion could be celebrated not only in a cathedral, church or chapel, but in a private house, or any other building, and there was no right to disturb a clergyman wherever he was ministering a sacrament. On the second point the court held that it was no part of the duty of the magistrates, on a charge of brawling in church, to inquire whether or not there was any breach of ecclesiastical law in the conduct of the service. Whether the service departs, either by excess or defect, from strict Church law and custom, is a matter entirely for the jurisdiction of the Ecclesiastical Courts. Complaints could only be referred to the Ordinary, the Bishop of Truro, who, it appears, had sanctioned the ceremonial used at the service which was the cause of the disturbance. The only analogy we can think of would be the case of a disturbance at a general meeting of a company, and the police being called in and having summoned the disturbers of the peace, the magistrates should refuse to convict on the ground that the meeting had not been lawfully convened, or that there was some other breach of the Companies Act thereat.

### "In Charge of a Motor Vehicle."

ONE of the most troublesome sections of the Road Traffic Act, 1930, is s. 15 (1), which deals with the offence of "driving, attempting to drive, or being in charge of a car" while under the influence of drink or drugs. Many problems have already arisen under this section, the most recent of which came before Mr. BINGLEY at Marylebone on 27th October. The accused had been found in a heavy sleep lying across the front seat of a stationary car. He admitted that he was drunk, but he said he had no intention of driving the car, the driver of which was inside a nearby house. The learned magistrate accepted his story, but held that he was in charge of the car within the meaning of the Act. This case must inevitably recall that heard at Bow Street on 16th May of this year, with which it makes an interesting comparison. The facts of the earlier case were shortly as follows: A car was being driven through Covent Garden in the early hours of the morning, when it broke down completely. The driver went into one of the market public-houses and had several drinks while waiting for a garage to open. He returned to the car, and, while sitting there making no effort to move it, was arrested and charged under s. 15 (1) with being drunk in charge of a car. The defence was that as the car was completely incapable of movement—it had to be towed away from Covent Garden—no offence had been committed. After considerable hesitation the learned magistrate expressed himself as very doubtful whether the Act could apply to a car in that state and dismissed the case on payment of costs.

In both cases it is impossible to help feeling that the Act was being extended to circumstances conceivably within its wide wording, but never envisaged by the legislature and scarcely in keeping with its objects. The gravity of the offence of being under the influence of drink or drugs when in charge of a motor vehicle surely lies in the danger to the public. If no attempt to move the car is being made or contemplated, or if the car is totally incapable of movement, it is difficult to see that the public is exposed to any danger. With great respect to the learned magistrate, it seems to be straining the ordinary meaning of " in charge " to extend it to a sleeping man, and what would be the position if, though the owner, he did not even possess a driving licence? If the man is guilty of being in charge of a car, the gravamen of which offence lies in his moving the car while in a drunken state, he might logically be convicted of driving without a licence. As to the Covent Garden case, it might almost be said that a car which is completely broken down has ceased to be a " motor " vehicle or indeed a " vehicle " at all, it is no more dangerous to be in charge of it than of any other immovable object. This is the common-sense view, and in the light of that case it appears to be the view of the law.

### Barring of Rights under a Foreign Bill.

THE duties of a holder of a bill of exchange with respect to presentation for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour are by s. 72 (3) of the Bills of Exchange Act, 1882, determined by the law of the place where the act is done or the bill is dishonoured. In *Société Anonyme Metallurgique de Prayon, Trooz, Belgium* v. *Koppel* (77 SOL. J. 800) the plaintiffs sued for £333 3s. 3d. due under a bill of exchange dated 2nd December, 1931, drawn by the defendant in Berlin on a German company and payable in Berlin on 3rd March, 1932, to the order of the drawer. The bill was dishonoured by the German company when presented for payment on 3rd March, 1932. The defendant was sued as indorser of the bill. By German law the rights of the plaintiff against the defendant terminated within three months of the date of protest, and the main question for the court to decide was whether the German law of limitation applicable extinguished the rights of the party suing or whether it merely barred or interfered with his remedy. The German experts had been agreed that the German law of presentation was part of the substantive law of the land, and Mr. Justice ROCHE arrived at a clear opinion, on the weight of authority, that " the present effect of German law was that under a document such as the one in issue the rights of the party were not extinguished, but the remedy was barred. It was clear from the authorities that English law regarded the law of limitation as a matter of procedure: " Dicey's Conflict of Laws," 4th ed., pp. 19, 31, 797; " Westlake's Private International Law," 7th ed., pp. 229-230; *Huber* v. *Steiner* (2 Scott. 304); and *Harris* v. *Quine*, L.R. 4 Q.B. 653; and the only laws of procedure applicable in English courts were those of English law. As there were no statutes of limitation in operation in English law against the plaintiffs, his lordship gave judgment for the plaintiffs with costs. In *Harris* v. *Quine*, *supra*, an action had been previously brought in a Manx court and dismissed on the ground that the Manx statute of limitations barred the remedy, and *Huber* v. *Steiner*, *supra*, was cited as an authority that where the remedy was barred in a foreign court, the foreign limitation did not prevent a right of action from being exercised in an English court, as the right itself was not barred. The foreign law is merely procedural, and " comes within the category of *lex fori*, and not *lex contractus* ": per BLACKBURN, J., in *Harris* v. *Quine*, at p. 658. In the case under consideration no action had been brought in a German court, but the principle was exactly the same as that in issue in *Harris* v. *Quine*, where there was no plea and therefore no judgment going to the merits of the case.

## Common Employment.

### APPLICATION OF THE DEFENCE TO BREACHES OF ABSOLUTE DUTY.

THE defence of common employment is no answer to a claim based on a breach of an absolute statutory duty independent of negligence. This has been settled law since *Groves* v. *Lord Wimborne* [1898] 2 Q.B. 402. On the other hand there appears to be no direct authority for the proposition that the defence is equally useless in cases of breach of an absolute duty at common law.

Upon general principles there seems to be no reason why the scope of the defence should not be extended thus far. The defence is apparently an application of the maxim " *volenti non fit injuria*," resulting in an implied contract by a servant to run the risks naturally incident to his employment, one of them being injury consequence on the negligence or incompetence of a fellow-servant. *Priestly* v. *Fowler*, 3 M. & W. 1, was the case in which it was first applied. There Lord Abinger, C.B., took the view that the defence was based on the maxim. Later cases, however, consider that the defence arises out of an implied contract, a view which is not, it is submitted, a different one, as Vaughan-Williams, L.J., appears to suggest in *Groves* v. *Lord Wimborne* (*supra*), at p. 418, but which, as has been suggested above, merely looks at the result of the maxim, namely, a contract.

In either case the defence of common employment appears to be an application of the maxim and therefore subject to the same limitations. No absolute duty, statutory or one imposed by the common law, is based on negligence. The plaintiff has only to allege a breach of the duty, which is not a duty to use care but to do or refrain from doing some act. The duty is absolute, and it cannot matter whether it be imposed by an Act of Parliament or by a judicial decision interpreting the common law, i.e., the good sense of reasonable people of that time, allowing, of course, for the inevitable gap between public opinion and its more cautious fellow-traveller, the law. In either case the duty is imposed because public opinion feels the need for it, and if a decision at common law will not impose it, then an Act must be passed to do so. Consequently, it is submitted, there can be no distinction, for the purpose of applying the defence, between the two ways of imposing the duty.

That being so, it is clear that the reasoning in *Groves* v. *Lord Wimborne* (*supra*, per A. L. Smith, L.J., at p. 410, and per Rigby, L.J., at p. 413) must apply to a breach of an absolute common law duty.

Turning to the cases, though there is no direct authority for the proposition, the basis of all the decisions seems to be not the distinction between absolute statutory and common law duties, but between absolute duties, independent of negligence, and duties to use care. This appears clearly from the passages cited above. Again in " Salmond on Torts," 7th ed., p. 131, the extension of the principle to common law duties is approved. Finally, the point was considered in the Court of Appeal in *Knott* v. *London County Council* (*The Times*, 20th October), an action by one employee of the defendants against another for damages for the breach of an absolute duty to keep safely a dangerous animal, namely, a dog, known to its owner to be prone to attack mankind. The duty is an example of one imposed by the common law and as Lord Hewart, C.J., pointed out the question of negligence or the doctrine of common employment does not arise. The appeal was dismissed because there was no evidence that the knowledge of the owner of the dog was, in that particular case, the knowledge of the defendants. Lord Wright, however, considered the question of the extension of the rule in *Groves* v. *Lord Wimborne* (*supra*), to a strict or absolute common law duty and expressed the view that it might well be so extended. This view seems to be the only possible view. It paves the way for an extension of the law and affords another example of its flexibility.

# The Recovery of Statute-barred Manorial Fines.

II.

REFERRING to the writer's recent article on this subject (77 SOL. J. 739), a correspondent in a letter published under "Correspondence" in this issue asks for information as to when the six years period of limitation commences to run.

It will be remembered that by s. 130 (5) of the Law of Property Act, 1922, fines and heriots (whether payable before or after the commencement of the Act) "shall be recoverable as simple contract debts and not otherwise, and shall not be recoverable (in the case of fines and heriots becoming payable after such commencement) after the expiration of six years from the date when they became payable, or (in the case of fines and heriots payable at the commencement of this Act) after the expiration of six years from such commencement." The question is, then, when do fines first become "payable"?

Before the Act of 1922 fines were in most manors payable to the lord by custom on every change of tenant which might occur by reason of death or to give effect to an alienation *inter vivos*. It was usually said that the fine was payable "on admission" of the new tenant. But this was not quite accurate as the fine did not become due until the tenant had been actually admitted, and admission could not be refused on account of non-payment of the fine: 1 "Watkins on Copyholds," 4th ed., p. 346. Fines are of two classes, viz., "A fine certain whereof the amount is either fixed or is ascertainable independently of the will of the lord, so that it is reducible to a certainty," or "An arbitrary fine . . . where the amount is dependent on its assessment by the lord or his steward": "Elton on Copyholds," 2nd ed., pp. 173-4. Fines were recoverable by action.

In the case of an arbitrary fine it might be thought that the lord's cause of action would not arise until the fine had been assessed and demanded. The contrary has, however, been decided. In *Monckton* v. *Payne* [1899] 2 Q.B. 603, the lord of the manor sued the defendant for an arbitrary fine payable on her admittance. The defendant had been admitted on the 5th April, 1892. The lord assessed the fine in February, 1898, but did not demand payment until the 2nd September, 1898, and issued the writ on the 13th April, 1899. Thus his action was brought more than six years after the admittance, but less than six years from the assessment and demand of the fine. The defendant pleaded the Civil Procedure Act, 1833 (3 & 4 Will. IV, cap. 42), s. 3, which provides "that all actions of debt . . . for any fine due in respect of any copyhold estates . . . shall be commenced and sued . . . within six years after the cause of such actions or suits, but not after . . ." A. L. Smith, L.J., held that the period of limitation began to run from the time of admittance and that the lord's right was barred. His lordship said: "No doubt it is true that the lord could not sue with any success until the fine had been assessed and demanded; but it is equally true that the very day on which the admittance takes place it is competent to the lord to complete the cause of action by assessing and demanding the fine. If he does not choose to complete his cause of action in this way when it is in his power to do so, that is entirely his own fault. I do not see how his conduct can prevent the operation of the statute, which, as it seems to me, was passed for the very purpose of preventing the tenant from being harassed by actions of such a kind long after the admittance. In my opinion, therefore, in such a case as the present the cause of action is the admittance, and the statute at once begins to operate." Has the substitution of the date when the fine became "payable" for the date of 'the cause of action" altered the law in this respect? It is submitted that it has not, and that a fine becomes "payable" immediately after admittance, though it may not be assessed or demanded until afterwards. It is suggested that "payable" means "liable to be paid," and that the liability attaches by reason of the admittance, although assessment is a necessary step to enforce payment. It seems, therefore, that where an admittance took place before the 1st January, 1926, the period of limitation for payment of the fine commenced to run on the 1st January, 1926, not on the date of assessment or demand.

It remains to consider the time when fines become "payable," when the occasion for the fine happens after the commencement of the Act of 1922.

*Fines on Alienation.*—By s. 130 the same fines (with certain exceptions) are payable on a transaction (formerly capable of being effected by a customary assurance), which would have been payable if the land had remained copyhold and the transaction had been effected by a customary assurance. Under the old law the occasion for the fine was the admittance, that is, the vesting of the legal estate in the tenant. It is suggested that under the new law the occasion for the fine will also be the vesting of the legal estate in the grantee, and that consequently the fine becomes "payable" on the execution of the conveyance, and that the six years commences to run from the date of the execution of the conveyance. By s. 129 an assurance is void unless it is produced to the steward within six months from the date of its execution, and the steward is not bound to return the assurance or endorse the prescribed certificate of production until the fine has been paid. But this section does not appear to affect the date on which the fine becomes payable.

*Fines payable by reason of death.*—It is remarkable that the Act contains no express provision as to fines which before the Act would have been payable on the admittance of a devisee or customary heir. On the death of the owner the land, having become freehold, devolves on his personal representative. In *Attorney-General to the Prince of Wales* v. *Bradshaw* [1930] 2 Ch. 279, on the death in 1928 of a tenant for life (the tenant on the rolls) his special executor (the defendant) in whom the land became vested under the Administration of Estates Act, 1925, s. 22, was held to be liable for the same fine as would have been payable on his admittance. Farwell, J., after a careful examination of the relevant provisions of the Act of 1922, said (at p. 291): "I must treat the matter as though the personal representative . . . was . . . a person who had obtained a good title against the lord. Under the law as it was before the recent legislation that person would have had to pay a fine to obtain such a title, and I must therefore treat the defendant as in the same position as if he had obtained admittance upon the death of the copyholder."

The principle involved in this judgment appears to be of general application, and there seems no doubt that the legal personal representative of the deceased owner will in all cases be liable to the same fine as would before the Act have been payable on his admittance.

The land vests in an executor at the testator's death, so that the fine would, it is thought, be "payable" at the testator's death. On the other hand, land does not vest in an administrator until the grant. Accordingly the fine cannot be "payable" by him until the date of the grant.

The position may then be summarised as follows:—

(1) Where the occasion for the fine was an admittance before the 1st January, 1926, the six years began to run on the 1st January, 1926, without regard to the date of assessment or demand.

(2) Where the occasion for the fine is an assurance *inter vivos* executed after the 31st December, 1925, the six years begins to run on the date of the assurance passing the legal estate.

(3) Where an owner dies after the 31st December, 1925, the six years begins to run from his death if he appoints an executor, or, in other cases, from the grant of letters of administration.

Finally, attention may be called to clause (vi) of the proviso to para. (8) of the 12th Sched. to the Act of 1922, whereby, where the land is under that schedule made to vest in any person who was not the copyholder in fee (i.e., the admitted tenant) at the commencement of the Act, then such person shall be deemed to have been admitted tenant immediately before such commencement, and will be personally liable to pay the fines which would have been payable by him on admittance. In this case the six years will run from the 1st January, 1926.

Space does not permit the consideration of the effect of s. 130 (5) of the Act of 1922 on s. 3 of the Civil Procedure Act, 1833. Is the latter provision in its application to fines impliedly repealed? Or can a person sued for a fine which on the 1st January, 1926, had been in arrear for (say) five years rely on s. 3 as barring the fine on the 1st January, 1926? However, if the writer's view that a fine became "payable" on admittance is correct, the point has already become merely of academic interest.

## Churchyard Burials.

THE learned Chancellor of the Diocese of Wakefield has contributed an article to the diocesan "Gazette" in which he expresses surprise that "the illegal practice of selling, or more accurately speaking, of pretending to sell, grave-spaces in churchyards still continues." It appears that one incumbent in making a return of the income of his benefice very properly disclosed an item designated "proceeds of sales of grave-spaces," as to which the learned Chancellor remarks that "neither the incumbent, nor the churchwardens, nor the Parochial Church Council, nor even the whole body of parishioners, can give or promise to any person the right to be buried in any particular part of the churchyard."

It is hardly necessary to point out that there is a fundamental distinction in this matter between a "churchyard" and a "cemetery." A churchyard (as the name implies) is a burial ground attached to a parish church. A cemetery is a burial ground provided by a local authority or other body under statutory powers. An entirely different body of law is applicable to the disposal of the space in a cemetery to that which applies to churchyards. Thus the local authority or company owning a cemetery may—

> "set apart such parts of the cemetery as they think fit for the purposes of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or for the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery": Cemeteries Clauses Act, 1847, s. 40.

And by the Burial Act, 1853, into which the Burial Act, 1852, originally affecting the Metropolis only, was incorporated almost in its entirety for general application, the terms of s. 40 of the Act of 1847 were adopted verbatim.

But we are here only concerned with churchyard burials and the position in regard to these may be summarised thus: the freehold of a churchyard, like the freehold of the church which it surrounds, is vested in the incumbent, but it is "for public purposes, nor for his emolument, to supply places for burial from time to time as the necessities of the parish require, and not to grant away any vaults, which cannot be done unless a faculty has been obtained": per Bayley, J., in *Bryan* v. *Whistler* (1828), 8 B. & C. at p. 293.

But although the freehold rests in the incumbent for the time being, the soil of the churchyard belongs to the parishioners for burials; and the management of the churchyard—as of the church itself—is vested in the churchwardens as representing the parishioners. They, in conjunction with the incumbent, may exercise a discretion as to the choice of a place for the interment of any deceased parishioner or other person whose remains may be allowed to be buried there. The right of burial for themselves is an easement which the parishioners may claim; and they may object to the burial of non-parishioners there. In any event, the consent of their representatives, the churchwardens, is a necessary preliminary to the burial of a non-parishioner.

As regards the remark made by the learned Chancellor of Wakefield Diocese that the churchyard is "the common property of the living and of generations yet unborn," the authority for that may be found in *Gilbert* v. *Buzzard* (1820), 3 Phillim. 357, where the legal doctrine is most clearly laid down:—

> "The legal doctrine certainly is that the common cemetery is not *res unius ætatis*, the exclusive property of one generation departed, but is likewise the property of the living and of generations yet unborn, and subject only to temporary appropriation. There exists a right of succession in the whole, a right which can only be lawfully obstructed in a portion of it by public authority, that of the ecclesiastical magistrate, who gives occasionally an exclusive title in a part of the public cemetery to the succession of a single family, or to an individual who has a claim to such a distinction, but he does not do that without just consideration of its expediency, and a due attention to the objections of those who oppose such an alienation from the common use. Even a brick grave without such authority is an aggression upon the common freehold interest, and carries the pretension of the dead to an extent that violates the just rights of the living."

In that case the churchwardens of a London parish objected to the burial of a corpse in a patent iron coffin on the ground that as the coffin appeared to be indestructible it would occupy the ground for a longer period than was just, having regard to the rights of future generations of parishioners. (The fact that most ancient churchyards have been used over and over again for the burial of successive generations of parishioners is one of the arguments frequently used by those who advocate cremation.)

As regards the *sale* of grave-spaces by individual incumbents in virtue of their rights as "freeholders," that clearly is not legal, if only for the reason that an incumbent is not freeholder in perpetuity, but only during his tenure of the incumbency; and he has no right whatever to dispose in perpetuity of what does not in fact belong to him. The grant of grave-spaces in perpetuity, as we have already seen, is within the discretion of the "ecclesiastical magistrate," to wit, the Chancellor; and there can be no doubt that anything in the nature of trafficking in the sale of grave-spaces by incumbent or churchwardens or parochial church council is wholly illegal; and money paid for such purported sales could, it is presumed, be recovered by action at common law.

The origin of all charges in relation to burial dates back to those ancient times when (see "Lindwood Prov.," p. 278) Christian burial might be denied to no one for reasons of money; that no such question was to be raised at the time of burial so as to hinder or deny the right; that no demand might be made for the grave; but that the custom of a fee or gift for performing the rite paid to the person for its performance was good and praiseworthy. And it is to be noted that at the present day, though the Ecclesiastical Commissioners will fix tables of burial fees which are enforceable by statute, and although ancient customary fees, approved by the bishop, may also be enforced, there is no provision of any sort for the sale of grave-spaces in parish churchyards. We have omitted all reference to burials in churches, a subject into which other considerations enter.

# Company Law and Practice.

**Minimum Subscription.**

For a long time now there has been little or no activity in the issuing world; but the present cheapness of money, the slight visible improvement in world conditions, and the steady, if slow, return of at least a measure of confidence have combined to make public issues of shares and debentures once more appear. In a great many of these cases it is desired to substitute a cheaper form of security for a dear one; there are many companies which borrowed money on debentures at a time when they had to offer a high rate of interest to make sure of getting the money subscribed, and which must now wish they had a lower rate of interest to pay. It is often possible to get out of a difficulty of this sort, because there is a power to redeem the debentures—then one can either redeem, raising the money by a fresh issue at a lower rate of interest, or vary the rights of the holders by lowering the rate of interest, if there is a proper majority clause, or making a new issue, giving the holders of the existing issue a right to exchange the whole, or part, of their holdings into the new issue.

A recent experience has shown that this operation has to be carried out rather tactfully; it was proposed to lower the rate of interest on certain debentures issued at a high rate of interest, as rates go at the present time. Some reference having been made by the directors to liquidation, this appears to have been taken by some of the debenture-holders very hardly, perhaps with reason. But we are not here concerned with the rights and wrongs from the moral point of view of such a course; what is the legal position? It has been suggested that the court would not allow a company to go into liquidation in order to get rid of its debentures, and it has also been suggested that liquidation would not give the company the right to repay its debentures. It seems to me plain that neither of these suggestions can hold water. If a company goes into liquidation, it is, I should have thought, too obvious for any argument to be needed that the debentures of the company are repayable, whether or not their conditions provide for their becoming repayable in liquidation. How can they possibly continue as a security or as a debt?

As to the other question—could a company be prevented from going into liquidation so as to get its debentures paid off—this seems to stand on a totally different footing from the cases where it is proposed to do something *ultra vires* the company or where the majority are prevented by the courts from oppressing the minority, of which latter class the case of which *Menier* v. *Hooper's Telegraph Works*, 9 Ch. App. 350 is perhaps the best known. *Burland* v. *Earle* [1902] A.C. 83, is another well-known case dealing with considerations of that nature. No doubt the court would not make a winding up order on a petition presented by the company in such a case, but it would be most unlikely that it should be asked to do so; s. 225 of the Companies Act, 1929, provides that a company may be wound up voluntarily "(*b*) if the company resolves by special resolution that the company be wound up voluntarily." It will be remembered that this is distinct from the winding up (which may follow from an extraordinary resolution) resulting from the company being unable by reason of its liabilities to continue its business.

There is under s. 225 (1) (*b*) no limitation of any sort: the members, if the appropriate majority is forthcoming, are given the opportunity of killing the company just when they please; and how could it be otherwise? It would be intolerable that the members should be compelled to continue the existence of the company after a substantial majority of them had made up their minds that they wished it to end. Maybe the termination of its existence renders all the company's obligations immediately payable, or at any rate immediately capable of being proved for in the liquidation, but this can hardly affect the right of the members to liquidate if they have the appropriate majority.

I fear I have wandered some distance from the title of this article, but perhaps the digression may be pardoned in the circumstances. What I set out to deal with was the minimum subscription, a matter which has reassumed some importance in view of the changed conditions, which are less unfavourable to new issues.

In the old days before the 1st November, 1929, the minimum subscription was frequently nothing much short of a farce—it was a commonplace to find it fixed at seven shares, which were immediately subscribed, and thereupon the directors went to allotment whatever the result of the issue. But in the new legislation an attempt was made to protect would-be investors from directors who would go to allotment without sufficient working capital to give any real prospect of success.

The new provisions are in the Fourth Schedule, Pt. I. By para. 5 of that part, one of the matters which are required to be stated in the prospectus where shares are offered to the public for subscription is particulars as to—

"(i) The minimum amount which, in the opinion of the directors must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

"(*a*) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

"(*b*) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for any shares in the company;

"(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

"(*d*) working capital; and

"(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided."

A fairly comprehensive list of requirements, you will say, and one which is fairly easy to understand. It is left to the opinion of the directors, but that is inevitable, at any rate, so far as (*d*) is concerned. The other matters may be capable of exact ascertainment, but not so (*d*); and this is where the investor is left in the hands of the board as, indeed, he is bound to be. But, if the question ever had to be determined in the courts, it seems more than likely that the directors would not be held guiltless if the amount required for working capital had been fixed at such a sum as no reasonable man could arrive at; the policy of the law may be said to coincide with what Wordsworth, when considering one of King Henry the Sixth's greatest achievements in the realm of architecture, stated to be an attribute of High Heaven, namely, to reject "the lore of nicely calculated less or more." But there is reason in all things, and the line would certainly have to be drawn somewhere if it became the practice to take an unjustifiably optimistic view of the amount of working capital required.

We have just seen what has to be stated in the prospectus as the minimum subscription—but that is not all. The law goes a step further, and says, besides disclosing these various matters in the prospectus, you must not go to allotment unless you have got that amount of share capital subscribed, and the amount payable on application for it paid to and received by the company (s. 39 (1)); and the amount payable on application must not be less than 5 per cent. of the nominal amount of the share (s. 39 (3)).

Now, in the old days to which I have referred, there were difficulties in the way of the application of these provisions, because cheques received before allotment but afterwards dishonoured were held, in *Mears* v. *Western Canada Pulp and Paper Co. Limited* [1905] 2 Ch. 353, not to be a payment: see also *Burton* v. *Bevan* [1908] 2 Ch. 240. In *Re National Motor Mail Coach Co. Limited* [1908] 2 Ch. 228, cheques were received but not paid into the bank until after allotment, and

this was held not to be payment, though, as it happened, the cheques were honoured. The Legislature has met these difficulties by saying that, for the purposes of s. 39 (1), a sum shall be deemed to have been paid to and received by the company if a cheque for that sum has been received in good faith by the company, and the directors of the company have no reason for suspecting that the cheque will not be paid.

An allotment made in contravention of the provisions as to minimum subscription is to be voidable at the instance of the applicant within one month after the statutory meeting, or where the allotment is made after the statutory meeting, within one month after the allotment, and not later (s. 41). It makes no difference if the company is being wound up (*ibid*).

## A Conveyancer's Diary.

**Effect of Redemption of Settled Annuities.**

An interesting case raising a new point upon the effect of s. 191 of the L.P.A. was recently before Farwell, J. in *Re Carr's Settlement* [1933] 1 Ch. 928.

Perhaps it may be best, first of all, to refer shortly to the provisions of s. 191.

Sub-section (1) enacts that " where there is a rent, being either (*a*) a quit rent, chief rent or other annual or periodical sum issuing out of land; or " (*b*) and (*c*) which are not material for present purposes, then the sub-section proceeds: " the Minister shall at any time on the requisition of the owner of the land or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed."

Sub-section (2) is concerned with a rent which " is perpetual and was reserved on a sale or was made payable under a grant or licence for building purposes."

Sub-section (3) provides for a case where the person entitled to the rent is absolutely entitled thereto in fee simple or is empowered to dispose thereof absolutely.

Sub-section (4) is important. I need not set it out at length. It is sufficient to say that where the Minister is satisfied (*a*) that the person entitled to the rent is unable or unwilling to prove his title or to give a discharge for the redemption money, or (*b*) such a person cannot be found; or (*c*) by reason of complications in title or want of trustees or other reason a tender of the redemption money cannot be made, then " the Minister may authorise the owner or other person interested in the land affected by the rent to pay the amount of the redemption money certified by the Minister . . . into court to an account entitled in the matter of the rent and of the land affected."

Sub-section (5) enacts that " On proof to the Minister that such payment (whether into court or otherwise) or tender has been made, he shall certify that the rent is redeemed under this Act, and that certificate shall be final and conclusive and the land shall be thereby absolutely freed and discharged from the rent."

I do not think that I need draw attention to the other sub-sections which, although important enough in other connections and perhaps in some respects may be difficult of construction, are not, I think, relevant to the questions which arose in the case to which I have referred.

Now, to return to *Re Carr's Settlement*.

By a settlement dated in 1892 two annuities of £150 each charged on leasehold properties were settled upon trust for Helen Sarah Carr for life, and after her death for her husband, Henry Lascelles Carr, during his life and after the death of the survivor of them for their three daughters during their lives with remainders to their children. The settlement provided that the trustees might retain the annuities in their then state of investment, but if H. S. Carr and H. L. Carr, or the survivor of them, should in writing require them to sell, or if they, after the death of H. S. Carr and H. L. Carr in their discretion should sell the annuities, the money produced by the sale should be invested as therein authorised. H. S. Carr and H. L. Carr were both dead. The owners of the properties upon which the annuities were charged applied to the Minister of Agriculture and Fisheries under s. 191 of the L.P.A., 1925, to have the annuities redeemed, and in January, 1933, the Minister certified that the annuities could be redeemed for the sums stated in his certificate. The trustees of the settlement received the sums so certified from the owners of the property upon which the annuities were charged and invested the money so received in proper trustee investments which did not yield a sufficient income to meet the two annuities in full.

In that state of facts, the question, of course, arose: What were the trustees to do? The annuities had ceased, and in place of them the trustees held a capital sum invested in a proper trustee security. The income from such investments did not yield sufficient to pay what had been the annuities. That was the result, not of any sale by the trustees, but of an enforced redemption under statute.

I must confess that I should have advised (had such a case been put before me) that the only proper course for the trustees to adopt (apart from obtaining the directions of the court) would be to pay the income arising from the investments to the person who would have been entitled to the annuities if still remaining. It would not, I think, have occurred to me that the persons now entitled to receive the annuities (if still continuing) could be placed in any better position than those who were entitled in remainder. It seems, however, according to the judgment of Farwell, J., that I should have been wrong.

In the course of his judgment the learned judge said: " There is no provision in the settlement as to what is to happen if the annuities cease to exist for any such reason as in this case, and in my judgment the true view is this: the annuities must be treated as still subsisting so far as the relative rights of the tenants for life and remaindermen are concerned." So far so good; although it is rather ambiguous, and I do not quite see why a state of things should be deemed to exist which in fact did not exist. Then his lordship continues: " The only way, in my judgment, in which their relative rights could have been altered under the settlement was either by a sale by the direction of the two tenants for life or the survivor of them or at the discretion of the trustees, or it may be under an order of the court for the administration of the trusts; but in no other way is it possible for their respective rights to be altered." That is a sweeping statement, with which, with great respect, I do not agree. The relative rights of the parties might be altered in at least two other ways—(*a*) by the operation of a statute, and (*b*) by agreement between the parties. Passing that for the moment, his lordship went on to say: " In my judgment the tenants for life are entitled, so far as it is possible, to remain in the same position *vis-a-vis* the remaindermen as they were before the sale took place." I respectfully agree, but should like to add that the remaindermen were entitled to remain in the same position " *vis-a-vis* " the tenants for life as they were before the sale took place. Then we come to the conclusion at which his lordship arrived: " How is that to be effected? In my judgment the right course to adopt is . . . The trustees should sell in each year sufficient of the capital to produce, with the income, £300 a year less income tax, and this annual sum is payable to the tenants for life." To put it bluntly, therefore, the tenants for life were to receive their annuities in full, regardless of the fact that the remaindermen might not receive their capital in full, or perhaps in course of time nothing at all.

The plain facts seem to have been that by reason of a statutory power over which none of the parties interested in the annuities had any control, the annuities had become capitalised, and it seems to me to follow that the income

arising from the capital sum realised was payable to the tenants for life of the annuities, and after the death of the survivor of them the income was payable to the persons entitled in remainder to the annuities. That, at least, appears to me to be the correct view of the matter.

I cannot, at present, see why the tenants for life of the annuities should, where the capitalisation of the annuities was compulsorily made under statute, be in any better position than that in which they would have been if the capitalisation had been carried out by a sale by the trustees under the powers conferred by this settlement.

If the learned judge was right then I say that either he did not sufficiently explain his reasons for the conclusion at which he arrived, or he has been inadequately reported.

## Landlord and Tenant Notebook.

**Antedated Lease.**

Leases are most frequently antedated when the tenant has taken possession under an agreement but before completion. Occasionally we find antedating without possession having been taken in the interim. In either case, the practice does at first sight seem rather puzzling, but it is probably due to the desire to make the lease expire on one of the usual quarter-days and to measure it by an integral number of years. Whether the advantages outweigh the disadvantages nowadays is perhaps questionable; no doubt they did when calendars were unknown.

For misunderstanding has been known to result, and the trouble which follows may be of that tragic variety when someone finds he has to pay for something he never even enjoyed.

The misunderstanding is usually due to a confusion in the mind of one of the parties as to the respective functions of habendum and covenants. Once it is clear that the habendum measures the term only and cannot have the effect of making covenants retroactive, trouble will be avoided.

Of course, this does not mean that by executing a lease a tenant who has occupied under an agreement is absolved from the consequences of breaking the terms of the latter. The plaintiff in *Cooper* v. *Robinson* (1842), 10 M. & W. 694, a replevin action, occupied at the time of the distress under a lease for fourteen years, to be held from 30th July, 1840, dated the 1st February, 1841, but actually executed after 29th September, the first payment of rent to be made "on the 25th March next." The defendant's cognizance said that he had distrained for a half-year's rent due 29th September, 1841. To this the plaintiff pleaded in bar that he had been released from the prior contract. The matter went no further; this pleading admitted the prior contract, and there was nothing to show release.

But if there is no such prior contract, remedies cannot be found by invoking the present one. In *Shaw* v. *Kay* (1847), 1 Ex. 412, a landlord sued for breach of covenant to repair. The covenant was contained in a lease made 9th November, 1842, to run "from 22nd June last past." It was in June that the tenant had entered, and had commenced demolition and reconstruction operations of which the lessor now complained. It was held that the tenant was liable only for acts which had occurred after execution. Presumably the plaintiff would have had some other remedy; either an action on an agreement, or in tort for trespass; and in these days would be allowed to amend—on terms.

This case was distinguished, or rather held not to apply, in *Bird* v. *Baker* (1858), 1 E. & E. 12, of which the facts were as follows: The parties had on 19th July, 1851, executed a lease under which the plaintiff granted the defendant certain premises "to have and to hold" them from 25th December, 1849, for a term of fourteen years, next ensuing, and either party had power to determine the lease at the determination of the first seven years thereof by giving six months' notice. The plaintiff gave a notice to determine in 1856; the defendant considered the lease could not be determined till he had enjoyed possession for seven years which next ensued from his entry and signing. He was wrong, and in the ejectment proceedings taken it was held that the clear intention of the parties was to make the lease determinable at seven years from the commencement of the term as expressed. One cannot help feeling some sympathy for the defendant, who may have thought that if he had not stayed on he might have remained liable for rent. He probably would not, even if the notice had been irregular, for the estoppel rule would have applied: see the recent case of *Farrow* v. *Orttewell* [1932] 49 T.L.R. 28, (76 Sol. J. 831).

Another instance of misunderstanding was afforded by *Jervis* v. *Tomkinson* (1856), 1 H. & N. 195. This case concerned a mining lease, under which the defendants were to work a rock-salt mine and make it yield not less than 2,000 tons a year or else pay for the deficiency at an agreed rate. By a proviso, the lease was to terminate if the salt gave out during the continuance of the term. This lease was executed on 16th November, 1852, to implement an agreement for a lease executed on 29th August, 1851. In the interim, the defendants had taken possession and the salt had become exhausted. Presumably they thought that by completing the agreement they would get the benefit of its terms. At all events, after the execution of the lease they did no work and paid no rent, and these omissions were the causes of action. The proviso was held to have no effect on anything that had taken place since 16th November, 1852.

## Our County Court Letter.

### LIABILITY FOR WORKMAN'S EYE INJURY.

The case of *Kirkham* v. *Webb & Corbett*, which was noted in the "County Court Letter" in our issue of the 29th April, 1933 (77 Sol. J. 297) was recently re-heard at Stourbridge County Court. The Court of Appeal, on the 11th July, 1933, had remitted the case for an award of compensation on the basis of partial incapacity. The fresh evidence was that, on the 14th September, 1933, the applicant had undergone an operation for glassworkers' cataract, and his case was that he was entitled to compensation (after the expiration of six months from the date of the accident) by virtue of the Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, para. 3. It was contended on his behalf that (*a*) the only reason for the six months' time limit was to prevent a man from refusing to have an operation, and so claim compensation for life, (*b*) the applicant (having had the operation) was entitled to the benefit of the proviso to the above paragraph, as he ceased work on the 17th August (when he was earning 65s. a week) and did not sign on again—at the employment exchange—until the 8th November. The respondents' case was that (1) as from the 7th October, the applicant was fit for ordinary labouring, and was fit for work as a glassworkers' labourer from the time of signing on, (2) the applicant had not shown any reason why he should receive compensation beyond the six months. His Honour Judge Roope Reeve, K.C. (sitting with a medical assessor) awarded compensation as follows, viz., for partial incapacity (from the 17th August to the 10th September) at 14s. 6d. a week; for total incapacity (from the 10th September to the 10th October) at 30s. a week; and thereafter at 14s. 6d. until such time as the respondents might apply to review, with costs, on Scale B.

### COMPENSATION FOR OLD ACCIDENT.

In the recent case at York County Court of *Sigsworth* v. *London and North Eastern Railway Co.*, an award was claimed in respect of an accident in 1907, when the applicant (being then a goods porter) had sustained a fractured rib. Being unable to

resume his work, the applicant had been made a mess-room attendant in 1913, whereupon he was paid the difference between the wages of that post and his pre-accident post. The medical evidence for the applicant was that he had chronic inflammation of the back muscle, and had never been free from pain. The respondents' medical evidence was that, although the applicant had neurasthenia in 1912, his health had since improved and he was no longer a sufferer therefrom. His Honour Judge Stewart, K.C., held that the injury had left no incapacitating element, e.g., neurasthenia, and there was no proof that, since his retirement (in February, 1933) the applicant had not the ability to earn—as far as the accident was concerned—a wage equal to his earnings at the time of the accident, i.e., 23s. 6d. Judgment was therefore given for the respondents, with costs.

### THE TITLE TO APPARENT EASEMENTS.

(*Continued from* 77 Sol. J. 628.)

The need for an express reservation of easements, on the division of property hitherto held in common ownership, was illustrated at Maldon County Court in the recent case of *Armour* v. *Valentine*. The claim was for £10, as damages for trespass, and an injunction, by reason of the following facts: (1) there were three adjoining cottages, one of which had been purchased by the plaintiff in May, 1932, (2) there was no fencing between the gardens, and the defendant had walked over the plaintiff's back garden (in order to throw rubbish over the sea-wall) and had not only taken his bicycle through her front garden but had allowed his visitors to sit there, and had even dug it up, (3) on the 20th May, 1933, the plaintiff had, therefore, erected a fence, but this had been knocked down. The defendant's case was that he was entitled to break down the fence, as he was merely using the land as it had probably been used for a century. Corroborative evidence was given by the defendant's landlady, who stated that (*a*) on letting the cottage, she allowed the defendant the same rights as she herself had from the previous owner, (*b*) there were really no gardens to the cottages, and the defendant remained her tenant until April, 1932, when she agreed to sell his cottage to him—although completion had not yet taken place. His Honour Judge Hildesley, K.C., observed that the three cottages had originally belonged to the last witness, who granted the defendant certain facilities—so long as she resided in the cottage subsequently bought by the plaintiff. Unfortunately for the defendant, he was not now entitled to those facilities, in the absence of a specific agreement. Judgment was, therefore, given for the plaintiff for £2 damages and costs, together with an injunction.

### THE SCOPE OF THE STATUTE OF LIMITATIONS.

The effect of a fresh agreement was considered at Eye County Court in the recent remitted action of *Stevens* v. *Bailey*, in which the claim was for £31 6s. for petrol supplied (and repairs effected) between the 21st May and the 26th September, 1926. The plaintiff's case was that (1) a sum of £31 15s. 9d. had been owing to one Bullock, from whom the plaintiff bought the business in 1926; (2) the defendant was aware of the transfer, as the plaintiff's name was substituted over the premises and upon the bill-heads; (3) in February, 1928, the defendant went through the account with the plaintiff (and his clerk) and the sum of £22 was agreed in full settlement, provided it was paid forthwith; (4) this condition was not fulfilled, and a writ for the original amount was therefore issued on the 18th January, 1933; (5) the agreement of 1928 was a fresh consideration, and the statute of limitations only began to run from the date of that acknowledgment. Corroborative evidence was given by the plaintiff's clerk, but the defendant denied that there had ever been an agreement or even an interview. His Honour Judge Herbert Smith held that (1) even if the amount had been reduced, there was no evidence of any set-off, which might constitute a payment under the Act; (2) the agreement was only conditional, and, on the plaintiff's evidence (which was accepted) the full amount was correctly claimed in the writ. In the result, however, the statute applied, and judgment was therefore given for the defendant, but (as his evidence was rejected) without costs.

### LESSOR'S RIGHT OF RE-ENTRY ON BANKRUPTCY.

In *Crampton* v. *Rowntree*, recently heard at York County Court, the claim was for £100 as compensation for the surrender of a lease of Spellar Park. The latter had been leased (in September, 1931) by the defendant to one Hutchison, at a rent of £50 a year, subject to three months' notice to quit and the payment of £100—if the premises were left in good and habitable repair. On the 15th February, 1933, a notice to quit was given by the defendant, by whom compensation was also promised, but, on the 17th March, a bankruptcy petition was filed by Hutchison. The defendant therefore contended that (1) he was entitled to possession without compensation, as the lease (in accordance with one of its clauses) had been terminated by the act of bankruptcy—a breach of covenant incapable of being remedied; (2) possession had not been given on the 15th May, at the expiry of the notice, as sub-tenants were still in possession on the 18th May, and there was a counter-claim of £30 for rent. The above-named plaintiff (as trustee in bankruptcy of Hutchison) contended that, having once exercised the option to pay compensation, the defendant remained liable therefor—whatever may have occurred afterwards. His Honour Judge Stewart, K.C., held, however, that (*a*) the payment of £100 was conditional upon the lessee yielding up the property at the end of three months; (*b*) being unable to do this, neither the lessee nor his trustee in bankruptcy could claim the amount. Judgment was therefore given for the defendant, with costs.

## Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

### Solicitors Act, 1933.

Sir,—I think Mr. Fisher's further letter in your issue of the 4th November, is more unfortunate in tone than the first one, which was published on the 21st October.

He implies that the observations in his first letter to which I objected, were not directed at me. If that is so, why does he not openly withdraw them and express regret for the way in which his first letter was worded.

I do not propose to reply to the remaining portion of Mr. Fisher's letter, because, to be absolutely frank, there is nothing, in my opinion, to reply to. He may join as many issues as he likes, but so far as I am concerned, the correspondence closes with this letter.

Victoria-street, S.W.1. M. Barry O'Brien.
6th November.

### Searches in Bankruptcy by Personal Representatives.

Sir,—I have just had occasion to refer to the article in your Journal for 29th October, 1932, under heading "A Conveyancer's Diary" and dealing with "Searches in Bankruptcy by Personal Representatives . . . when making a division," and see that the difficulties dealt with in that article are those occasioned by ss. 45 and 46 of the Bankruptcy Act, 1914.

It would be of considerable interest to me, and doubtless to others of your readers, if your contributor would let us have his views as to whether or not an administrator (who, before distribution, searches against what used to be known

as the next-of-kin, and finds that one was adjudicated a bankrupt before the death of the intestate and had not obtained his discharge prior to the death) would be justified in paying over, without informing the trustee, to such next-of-kin the share to which he was or would be entitled but for the bankruptcy, regard being had to s. 47 (1) of the said Act.

The position of the administrator would seem to turn on the construction of the words "*bonâ fide* and for value." If no protection would be afforded, then it certainly seems advisable that an administrator should search before distribution.

Southampton-street, W.C.1. ALFRED POWELL.
26th October.

## Recovery of Statute-barred Manorial Fines.

Sir,—I have read with interest the article on p. 739 of your issue of the 21st October, on the recovery of statute-barred manorial fines.

I think that perhaps it may lead to some mistaken impression that fines become statute-barred at the expiration of six years after the event (such as the death of the admitted tenant) or six years after 1925 if the event happened before the Act came into force.

I think it is clear that the six years period does not begin to run until the fine has become enforceable, and it does not become enforceable merely upon the death of the admitted tenant or on the passing of a surrender *inter vivos*.

Before 1926 a fine was not enforceable after the death of the admitted tenant until admission of his successor which could be enforced by making proclamations for someone to take admission followed by seizure of the land until admission was taken. When the late Sir Benjamin Cherry lectured to members of The Law Society in 1925 I asked some questions in reply to which he said that a fine would become enforceable when the personal representative presents an assurance to the steward, or when a compensation agreement is entered into, or when notice to determine the compensation is served.

There can, I think, be very few cases in which a fine has been assessed and allowed to remain unpaid for six years so it appears improbable that the article was written with the intention of referring to those rare and exceptional cases. As a steward of several manors and as having a considerable practice in manorial matters I should appreciate an expression of the author's views as to when the six-year period commences to run.

Newark-on-Trent. H. TALLENTS.
27th October.

[A further article by the learned contributor on this subject, dealing with the point raised by Mr. Tallents appears on p. 788.—ED., *Sol. J.*]

# Obituary.

### HIS HONOUR T. B. NAPIER.

His Honour Thomas Bateman Napier, LL.D., a former Judge of the Derbyshire County Courts, died at his home in London on Monday, 6th November, at the age of seventy-nine. Educated at Rugby and London University, he was called to the Bar by the Inner Temple in 1883. He won several law scholarships and prizes, and in the Bar Final in 1882 he obtained a certificate of honour and was the first senior. He became a member of the L.C.C. in 1893, and was Chairman of the Corporate Property and of the Parliamentary Committee. In 1895 Mr. Napier was appointed a Justice of the Peace for Middlesex. He represented the Faversham Division of Kent as a Liberal from 1906 to 1910, and in 1912 he was appointed Judge of County Courts, Derbyshire. He was also responsible for several legal publications.

### DR. F. J. WALDO.

Dr. Frederick Joseph Waldo, M.A., late coroner for the City of London and Borough of Southwark, died at his home in Holland Park, W., on Thursday, 2nd November, at the age of eighty-one. Educated at Clifton, St. John's College, Cambridge, and St. Bartholomew's Hospital, he graduated M.D., and also took the diploma of public health. He was called to the Bar by the Middle Temple in 1896, and in 1904 he was lecturer on Medical Jurisprudence to the Council of Legal Education. He was appointed City Coroner in 1901, and he resigned in 1922. He had held the offices of Honorary Secretary and President of the Coroners' Society of England and Wales.

### MR. G. A. BETTINSON.

Mr. George Alfred Bettinson, solicitor, senior partner in the firm of Messrs. Forsyth, Bettinson & Company, of Birmingham, died at his home at Edgbaston, on Saturday, 4th November, in his sixty-sixth year. Mr. Bettinson was admitted a solicitor in 1892.

### MR. V. B. DAVIES.

Mr. Vere Beamont Davies, retired solicitor, formerly senior partner in the firm of Messrs. Robert Davies & Co., of Warrington, died at his home at Stockton Heath, on Saturday, 28th October, at the age of seventy-four. He was admitted a solicitor in 1885, and joined his father's firm. He retired in 1919.

### MR. C. W. HOBSON.

Mr. Charles William Hobson, retired solicitor, of Beverley, Yorks, died at his home at Beverley, on Saturday, 28th October. Mr. Hobson, who was admitted a solicitor in 1879, was Clerk to the Beverley Board of Guardians for over fifty years.

### MR. J. H. JONES.

Mr. J. Horatio Jones, solicitor, of Bangor, died at Liverpool, on Monday, 6th November. Mr. Jones, who was admitted a solicitor in 1906, was about fifty years of age. He was for a short time a member of the Bangor City Council.

### MR. W. G. KEMPTHORNE.

Mr. William Granville Kempthorne, solicitor, of Camborne, Cornwall, died recently. He was admitted a solicitor in 1886.

### MR. W. H. MILLS.

Mr. Walter Herbert Mills, retired solicitor, of Stockton, died at his home at Marton-in-Cleveland, on Saturday, 4th November, at the age of seventy-four. Mr. Mills was educated at Durham, and having served his articles with Messrs. Newby, Richmond & Watson, now Messrs. Newby, Robson & Cadle, of Stockton, he was admitted a solicitor in 1882.

### MR. J. E. NEWALL.

Mr. James Edward Newall, solicitor, of Skipton, formerly clerk to the Barnoldswick Urban District Council, died at his home, at Skipton, on Tuesday, 24th October. He was admitted a solicitor in 1896, and after about eighteen minths at Belsize, British Honduras, as Assistant Solicitor to the Attorney-General of the Colony, he returned to Skipton and began to practise on his own account. He was appointed Deputy Coroner to the Craven District of Yorkshire, but resigned owing to ill-health.

### IMPORTANT NOTICE TO SOLICITORS.

ANNUAL PRACTISING CERTIFICATES.

**Practising certificates for the year 1932–33 will expire on the 15th November, and should be renewed before the 15th December.**

**All certificates on which the duty is paid after the 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in the Law List for 1934.**

# Reviews.

*London Prisons of To-day and Yesterday.* By ALBERT CREW, of Gray's Inn, the Middle Temple, the Central Criminal Court, and the South-Eastern Circuit, Barrister-at-Law. 1933. Demy 8vo. pp. viii and (with Index) 268. London: Ivor Nicholson & Watson, Limited. 10s. 6d. net.

The title of this book is perhaps not wide enough, for though principally concerned with the prisons of the capital, the author writes with his eye on the whole of our penal system. His work is valuable, treating compendiously, accurately and in detail, a subject on which reliable information is difficult to obtain.

His bare recital of the facts gives one an appalling picture of the mental cruelty of the nineteenth century prison, more horrible, by comparison, even than the physical cruelty of eighteenth century Newgate. The Old Bailey had its "Beggar's Opera," but what could even Gilbert and Sullivan have made of the oatmeal gruel, bread and potato diet, the masked and grey-clad prisoners, the hard-labour machines, the silent, lightless punishment cells of Victorian Wandsworth?

In looking forward to the prisons of the future, perhaps the author leans with unduly trusting humanity on the hope of converting them into moral hospitals where reformation is paramount and punishment at a discount. We all would like to see that day, but till the world as it is offers no inducement to crime, humanisation can hardly proceed further than it has gone. The author, it should be added, does not ignore the advocates of a view sterner than his own. The chief value of this book lies in its facts rather than in its speculations.

*Principles of the Law of Real Property.* Founded on the Twenty-fourth Edition of "Williams on Real Property." By R. A. EASTWOOD, LL.D., Professor of Law and Dean of the Faculty of Laws in the Victoria University, Manchester, of Gray's Inn and the Northern Circuit, Barrister-at-law. Royal 8vo. pp. xlii and (with Index) 606. London: Sweet & Maxwell, Ltd. £1 7s. 6d. net.

This is necessarily not so much the twenty-fourth edition of "Williams on Real Property" as a new work founded upon that famous classic. Students have been familiar for many years past with the lucid presentation and style of the late Mr. Joshua Williams and the late Mr. Cyprian Williams. On many subjects, notably in those where the continuity of essential principles is shown connecting common law methods with modern methods of conveyancing, the only course was to reproduce the matter of the original, and that course has been faithfully adopted by the present editor. The new scheme of interests in land necessitated a somewhat different arrangement of the subject matter, but the work has gained rather than lost as a result of this re-arrangement. Students will be grateful for the clear and bold manner in which some of the more difficult questions arising out of the new legislation have been dealt with, an excellent example being that arising in *Re Leigh's Settled Estates* (No. 1) [1926] Ch. 852; *Re Leigh's Settled Estates* (No. 2) [1927] 2 Ch. 13; and *Re Parker's Settled Estates* [1928] Ch. 247. The learned editor is to be congratulated on his success in modernising this classic, which still remains a book which not only is attractive to the student commencing his studies, but also retains it usefulness long after he has qualified as a practitioner.

*The Bulwarks of Peace and International Justice.* By HEBER L. HART, K.C., LL.D., late British Member of the Mixed Arbitral Tribunal. 1933. Crown 8vo. pp. xxvi and (with Index) 240. London: Methuen & Co., Ltd. 7s. 6d. net.

This is a new and revised edition of a treatise first published in 1917 in which the learned author was concerned to show that the only effective method of providing against future wars lay in a covenant for mutual assistance, within agreed limits, in maintaining peace under the League of Nations, but subject to the condition that each power should disarm down to the limit of the forces necessary for fulfilling this covenant and for the purpose of maintaining order within its own territories. His view is that the Locarno Treaty involves a far graver risk than Britain ought to have undertaken. The volume is divided into twenty-one chapters each supporting a definite proposition: and the whole concludes with an appendix setting out the Covenant of the League of Nations. The first of the propositions which the learned author sets himself to develop is that the natural progress of mankind involves the development of a social conscience which will ultimately secure the prevalence of goodwill and peace; the last is that if the League of Nations is to fulfil its purpose it must provide an authority empowered to determine in the last resort every dispute which may threaten to disturb the peace of the world. In traversing from the first to the last, the author, without being an advocate of any particular course of policy, has set himself to indicate the changes which must be made in the constitution and powers of the existing League of Nations if it is to become an effective organisation for the maintenance of peace.

*Porter's Laws of Insurance.* Eighth Edition. 1933. By T. W. MORGAN, of Gray's Inn and the Oxford Circuit, Barrister-at-Law. Demy 8vo. pp. xxxvii and (with Index) 567. London: Sweet & Maxwell, Ltd. 32s. 6d. net.

The last edition of this well-known book was completed in 1925. Consequently the new edition includes many changes which legislation has since then effected in Insurance Law. Perhaps the most important is the change made by the Road Traffic Act and the Third Parties (Rights Against Insurers) Act, both of 1930. This branch of the law is given a chapter to itself. There are also sections of the Law of Property Act, 1925, and of the Landlord and Tenant Act, 1927, which have altered the law. All these are fully dealt with, and the decisions on them right up to date are given.

Unfortunately, the book shows signs of inadequate revision. There is a grammatical error at p. 69. At pp. 101 and 491 Latin legal maxims are quoted, each containing an elementary grammatical "howler." At p. 247 there is a reference to Ord. XVI, r. 48, of the R.S.C., a rule which gave place to Ord. XVI A over four years ago. These are, however, but criticisms of details. Apart from them, the edition is well worthy of its predecessors. The book is especially useful in that it contains chapters on all the various forms of insurance, and also in that it contains numerous Dominion and American cases. Many of these appear to decide questions which would never have been litigated in England, their answers being too obvious, but many of them provide most valuable assistance to the practitioner who is more than ever being called upon to consider questions involving the Laws of Insurance.

## Books Received.

*The Lawyer's Companion and Diary, and London and Provincial Law Directory*, 1934. Edited by VIVIAN A. A. ELGOOD, Solicitor. Eighty-eighth Annual Issue. 1933. London: Stevens & Sons, Limited; Shaw & Sons, Limited. 7s. 6d. net.

*The Annual Practice*, 1934. By W. VALENTINE BALL, a Master of the Supreme Court, and F. C. WATMOUGH, of Lincoln's Inn, Barrister-at-Law, assisted by PHILIP CLERK and T. HYDE HILLS. Fifty-second Annual Issue. 1933. Demy 8vo. pp. cccexl and (with Index) 3131. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. £2 net.

*The A.B.C. Guide to the Practice of the Supreme Court*, 1934. By F. R. P. STRINGER, of the Central Office of the Supreme Court. Twenty-ninth Edition. 1933. Crown 8vo. pp. 209. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. 7s. 6d. net.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

### Presumption of Prior Death of Deceased's Husband.

*Q.* 2851. In 1903 A was married to B, who left her about 1908. About 1910 (actual dates can be obtained) A heard that B was seriously ill, and since then nothing has been heard of him either by A or any member of B's family, all of whom believe him to be dead. A has just died intestate leaving estate valued under £300 and is survived by a lawful son, two sisters and a niece. How should the status of A be described in the Revenue affidavit, oath, bond, etc. ? Should B be advertised for, or in what other way should he be cleared off ? Further, the son and two sisters each intend to renounce administration, as they all desire the niece to look after the estate. Is this permissible as the niece cannot possibly have any interest in the estate ? It will presumably be necessary to file renunciations of all three prior parties. Precedent of oath would oblige.

*A.* Under the circumstances A's son might lawfully presume the death of B and make the ordinary oath that A died a widow. Under no circumstances could a grant be made to the niece who has no interest in the estate, unless perhaps A's son disclaims by deed all interest in the estate as well as renounces administration. The effect of a disclaimer of a gift by will or deed is well known, but there appears to be no authority on the effect of a disclaimer by the only person entitled to an estate, and it is not advisable to test the question, as the Crown might make a claim to the estate a *bona vacantia*. Of course, the son would be taking some small risk in swearing that A died a widow, as if B did turn up the son would have to account for the estate. It appears hardly worth while, however, going to the court for an order to presume B's death, which would be done if the estate were large. Unless B's name is a very common one, it would be worth while (unless B was known to have gone abroad) having a general search in the Registry of Deaths at Somerset House, where the names are indexed merely as having taken place in the various registration districts; alternatively advertisements might be inserted in such papers as *The News of the World*, but as before stated on the facts given it is considered that the son would be justified in swearing that A was a widow.

### The Contracts of Domestic Servants.

*Q.* 2852. A domestic servant is engaged at a weekly wage of £1 5s., payable weekly, without any express conditions as to notice. Can she be discharged on a week's notice ?

A domestic servant breaks a glass and throws it in the dustbin. On being asked what has become of it she professes complete ignorance, but on the fragments being produced confesses that she told a lie. Can the mistress discharge her without notice on the ground of bad faith ?

*A.* In view of the absence of conditions as to notice, the fact that wages are paid weekly entitles the mistress to discharge the servant on a week's notice. The evidence is that she is engaged on a weekly contract.

It appears that the fragments were found before (and not after) the servant was questioned about the glass, so that the question was in the nature of a trap. The servant would probably not have told a lie if the fragments had been first produced to her, and she had merely been reprimanded for not reporting the loss and damage. As the lie was partly induced by the action of the mistress, the latter is not entitled to discharge the servant without notice. The evasion of the servant was probably due, not so much to bad faith (or any intention to deceive) but rather to her desire to escape a scolding or a demand for the replacement of the glass out of her wages. On a claim for wages in lieu of notice, the sympathy of the court would probably be with the girl, unless the glass was valuable, or the incident was one of a series, and the servant had been warned previously about the consequences of concealment. On the whole, the question is therefore answered in the negative.

### Maintenance Order—Recovery of Arrears after Husband's Death.

*Q.* 2853. In 1926 A left a will in favour of B, and appointed her sole executrix. B proved the will and disposed of the estate without advertising for creditors. Seven years later a claim has been put forward by C (the widow of A) for maintenance up to the date of death under an order of the justices of which order B had no knowledge. Is B entitled to say that the claim is statute barred ?

*A.* Arrears due under a maintenance order are recoverable against the deceased's estate: *Firman* v. *Royal* [1925] 1 K.B. 681. In that case it was assumed that the right was limited to six years arrears up to the husband's death, but although the action was not heard until seven years after the husband's death and may possibly not have been commenced till after six years had expired, the point was not taken that as to payments due for years over six from the commencement of the action, the claim was statute barred. There is no authority for holding that the order of the justices is a judgment under s. 8 of the Real Property Limitation Act, 1874, and consequently the opinion is given that C's claim in the present instance is barred by the Limitation Act, 1623. If she had distributed the estate to other beneficiaries she could clearly have pleaded the statute (*Re Blow: St. Bartholomew's Hospital* v. *Cambden* [1913] 1 Ch. 358) and it is considered the principle would be applied to the executrix retaining the property as universal legatee.

### Registration of De-controlled Part of House where Part not separately Rated.

*Q.* 2854. A client owns a house of which he obtained vacant possession in August, 1923, and which was first let in two parts (not self-contained) late in that year. It was then rated between £20 and £21 and the rents were 11s. and 12s. weekly. The house was still rated as a whole, at the same rateable value, on 6th April, 1931, the appointed day, and is still so rated. Both parts of the house are now let at 18s. each weekly. Is it correct to assume that it is not necessary to register the house under the Rent Act, 1933 ?

*A.* Although the two parts of the house are not separately rated, it is clear that if the rateable value of the whole house was apportioned, that of each part would not exceed the limits specified in s. 2 (1) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. In view of the provisions as to apportionment of rateable value contained in s. 16 (2) of the Act, it appears to be necessary to register under s. 2 (2) of the Act each part of the house which was let as a separate dwelling immediately before the passing of the Act. Confirmation for this view is to be found in para. 4 of the Circular (1348) to housing authorities issued by the Ministry of Health,

dated 24th July, 1933, and in the Form of Application for Registration contained in Pt. III of the Schedule to the Rent Restrictions Regulations, 1933, which provides for the case of a dwelling-house where it forms part only of a rateable hereditament.

### Notice of Trust on Pre-1926 Transfer of Mortgage.

*Q.* 2855. In 1908 by a mortgage containing the usual joint account clause, A mortgaged certain premises to X and Y. X died in 1919, and Y died in 1920, having by his will appointed Z sole executor. By transfer of mortgage, in 1921, containing a recital that Z and Q were entitled in equity to the mortgage moneys, Z transferred the mortgage to Z and Q. The mortgage is now being paid off by A. Has A notice of a trust? The recital is not the same as in *Re Harman and The Uxbridge, Etc., Rly.*, 24 Ch. D. 720, as in that case the deed contained a recital by an executrix that her testator held the property on trust for other persons who were jointly entitled thereto, whereas in the present case the recital is an acknowledgment that Z, the executor of the will of Y, is trustee for Z and Q. There is a *dictum* of Tomlin, J., in *Re Baten & Shepherd's Contract* [1924] 2 Ch. D. 378, to the effect that the position in that case might well have been different if the question arose with regard to a mortgage.

*A.* We do not think that it is necessary to go behind this recital, which is clearly intended to keep notice of a trust off the title. It seems to us no worse than the common form recital used in such cases. If it appears on the face of a document that a mortgage debt vested in one or more persons belongs in equity to another or others, it follows that the one or more persons must be a trustee or trustees for that other or others, but the *definite* nature of the trust affecting the debt in the hands of the trustees thereof from time to time is not in any way disclosed. It would appear that (prior to 1926) it was not necessary to look behind such a recital unless it gave notice of a definite trust, and now it is not necessary to trouble about a notice of a trust if the transfer is dated after 1925 (L.P.A., 1925, s. 113).

**Trustee**—Power of Attorney under T.A., 1925, s. 25—Effect of Brief Return to this Country.

*Q.* 2856. In 1929 a missionary executed a power of attorney in respect of a certain trust. It was to be irrevocable for one year, and should be revoked by the return of the principal to the United Kingdom. The missionary has now returned on a very short furlough. The question has now been raised as to whether this short return is sufficient to revoke the power. We have advised that it is. Is this advice correct? Is there any means of reviving the power without a new power of attorney?

*A.* We agree that the power is revoked (T.A., 1925, s. 25 (3)). Whether it is competent to a trustee to make a power irrevocable within L.P.A., 1925, s. 127, seems obscure; the writer is disposed to believe that he cannot. We know of no method of reviving the power. A new power will be required on the return of the missionary to his field of duty.

**Will**—Death Prior to 1898—Real Estate—Necessity for Probate.

*Q.* 2857. At what date or time did the present probate practice originate? I have a title in which there is a will dated in 1865 and the testator died on about 5th March, 1882, and it is stated at that time wills were not proved as to which query.

*A.* Prior to the coming into force of the Land Transfer Act, 1897, Pt. I (1st January, 1898), probate in common form of a will dealing solely with real estate could not be granted unless (perhaps) an executor was appointed (*Re Tomlinson*, 6 P.D. 209), or in other special circumstances. Indeed, such probate was not necessary, since property devised prior to that enactment was assured by the will direct to the devisee. Real estate for the purposes of this enactment did not include the bulk of copyholds, and thus until 1926 a will dealing solely with such excluded copyholds was not in the normal case admissible to probate. Section 1 (3) of the Act authorised the grant of probate of a will dealing solely with real estate. Probate of a will of personalty, or of both real and personal estate, in common form, has long obtained, and formerly was the function of the Ordinary, but by the Court of Probate Act, 1857, the Ecclesiastical Courts were deprived of their jurisdiction in such matters and the modern procedure established. Under the Court of Probate Act, 1857, a will dealing with real estate only could be proved in solemn form. It is to be observed that, both under the Stamp Act, 1815, s. 37, and under the Finance Act, 1894, s. 8 (6), and the Finance Act, 1896, s. 18, failure to obtain probate of a will of personalty is attended with penalties. With the above information before him our subscriber will be in a position to judge whether the statement that wills were not proved in 1882 is in his case justified.

### Title to Stolen Ring.

*Q.* 2858. A steals X's diamond ring. He sells it to B, who is a jeweller, in B's shop in the City of London. B sells it in his shop to C. C sells it in Carlisle to D, who subsequently spends money on having the diamond reset. Advice is required as to X's rights against B, C and D respectively. It would appear that B is liable for conversion. C has acquired in market overt, so that presumably the property passes to C (until the conviction of the thief), and that C's act is not conversion. However, C has sold to D, and C having a perfectly good title to the ring, could presumably pass the title on to D. D then would be in a like situation to C. D has done work on the ring, and that presumably means that no court would issue an order of specific restitution against him.

*A.* The custom of market overt (in the City of London) does not apply, where the rule is *to* the shopkeeper, instead of *by* him: see *Hargreave* v. *Spink* [1892] 1 Q.B., at pp. 28 to 32. It is therefore agreed that B is liable for conversion, but C (having acquired in market overt) acquires the property in the ring, and D is in an equally good position—until the conviction of the thief. The effect of such conviction (under the Sale of Goods Act, 1893, s. 24) is that the property re-vests in the person who was the owner, notwithstanding any intermediate dealing—even by sale in market overt. The fact that D has done work on the ring is no reason for the refusal of an order for its return. The court can only impose terms upon the original owner (as a condition of his recovering his property) under the Pawnbrokers Act, 1872, s. 30. There is no provision in any other statute safeguarding the rights of any other possessor—even an innocent purchaser, such as D.

### Assignment of Contract by Company.

*Q.* 2859. The A Company Limited and the B Company Limited made an agreement under seal for the purpose of obviating competition over a period of years. The agreement does not relate to land. The capital and undertaking of the A Company has now been acquired by the C Company Limited, and it is proposed to substitute the C Company for the A Company as a party to the agreement. The question arises whether the memorandum substituting the C Company for the A Company must be under seal having regard to s. 29 (3) of the Companies Act, 1929, and which appears to create an exception to the rule of equity that a contract under seal can now be varied by a parol contract. Section 29 (3) suggests that the variation must be made in the same way as the original contract. The point is of importance as it affects the stamp duty on a number of agreements.

*A.* It appears that the question does not relate to a variation or discharge of the agreement, so that the Companies Act, 1929, s. 29 (3) is not applicable. The proposed course

is an out-and-out assignment of the agreement as it stands, and for this purpose a memorandum under hand only (and not under seal) will suffice. The C Company Limited might even claim the benefit of the agreement, without an express assignment, as the facts appear to be within the principle laid down in *Tolhurst* v. *Associated Portland Cement Manufacturers, Ltd.* [1903] A.C. 414.

### Disclaimer by Liquidator.

*Q.* 2860. A colliery company which is being wound up voluntarily held certain mineral properties under agreements for leases which contain the usual provisions of an onerous nature, and the question has arisen whether the agreements referred to ought not to be disclaimed by the liquidator under his statutory power. The liquidator has completed the realisation of the company's assets, but, as the proceeds of sale are not sufficient to meet the costs of the liquidation, he desires, if possible, to avoid the expense of making a formal disclaimer of the agreements, which can, apparently, only be disclaimed with the leave of the court. It has been suggested to the mineral landlords that in lieu of a formal disclaimer by the liquidator, the agreements should be handed back to the landlords and treated as at an end. The company's mortgagees have handed the agreements over to the liquidator, and have intimated to him that they have no objection to the same being disclaimed. The solicitors acting for one of the mineral landlords, however, contend that, if the liquidator handed back the agreements without the leave of the court, the mineral property would only re-vest in the landlords subject to any existing liabilities of the company, and that it is doubtful whether the landlords would agree to accept what amounts to a surrender in such circumstances. We shall be glad to know whether, in your view, there is any objection to the agreements being handed back to the mineral landlord as suggested, or whether the liquidator ought to proceed with the formal disclaimer.

*A.* The contention advanced by the solicitor (acting for one of the mineral landlords) appears to be sound. Even if the mortgagees regard the agreements as valueless, the unsecured creditors may not be of the same opinion. Apart from whether the re-vesting would be subject to any existing liabilities of the company, the liquidator should obtain the leave of the court for his own protection, otherwise he might be exposed to the risk of misfeasance proceedings. The procedure of a formal disclaimer should therefore be followed.

### Rent Restrictions Act, 1933.

*Q.* 2861. In the provisional rules and orders, a form of notice is given, to be inserted in the rent book. The fourth particular to be filled in is the standard rent. In the case of properties which have been conveyed several times, the purchaser relying upon the vendor's particulars of the rent charged by him, and continuing with the same without any notice of irregularity from the tenant, it is impossible for the landlord to state the actual standard rent of 1914, and, really speaking, to check up accurately the rent which the tenant is now paying. In cases like this, is it in order to work out what the standard rent would be assuming the gross rent (which has not been disputed by the tenant) is correct, and insert this amount in the notice, leaving it to the tenant, at some future date, to bring the matter to the county court for adjudication, under such powers under the act itself, or, in every case, is it imperative that, where the landlord has not documentary evidence of the 1914 standard rent, that he apply immediately to the county court for the court to fix the standard rent? It has been suggested to me that the latter is the proper course, but, logically, it appears peculiar that the Act should get over the old difficulty of ascertaining the standard rent by making a new basis for determination of the rent, and that provisional order should, for the purposes of a notice, compel everybody to state the standard rent, and apply to the court for a decision when there is no dispute with the tenant.

*A.* If the standard rent is not exactly known, it would appear that strictly speaking application should be made to the county court to fix the standard rent. The provisions of s. 6 of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, are intended to deal with such a case. If, however, the standard rent can be ascertained by assuming that the gross rental is correct, there appears to be no serious objection to this course.

**Estate Duty**—Policy Effected by Husband for Benefit of Himself and Wife—Money Payable to Survivor—Death of Wife.

*Q.* 2862. A in 1925 took out an assurance policy for £1,500 with profits on the life of himself and his wife, the policy moneys to become payable to the survivor of them or their assigns. The first premium was a lump sum of £1,016 and the subsequent premiums £19 16s. 10d. per year, and these premiums have all been paid by A. The wife has recently died and the policy moneys are being paid to A. It is contended that this is a case of a policy on a life which was effected and kept up by A for his own benefit, and no estate duty is payable. Is this contention correct?

*A.* We can find no direct authority on this question, but a policy is undoubtedly property, and since a husband can insure his life for the benefit of his wife, the wife had a contingent interest in it, and it can hardly be said that the policy was the property of the husband, as in the case of *Attorney-General* v. *Murray* [1904] 1 K.B. 165 (policy effected by a father on his son's life). Failure of a contingent interest is sufficient to create a succession (*Attorney-General* v. *Pearson* [1924] 2 K.B. 375, a case on aggregation). One would think the principle of s. 15 of F.A., 1896, *ought* to apply, but A can hardly bring himself within the words of the section, and the opinion is reluctantly given that there was a passing of property on the death of the wife in respect of which estate duty is payable, though we regard the point as not free from doubt.

**Trustees of Trade Union**—Liability for Breach of Covenant in Lease.

*Q.* 2863. In 1912 a lease was granted to A, B and C, the trustees of a trade union. In March, 1933, the then existing trustees of the union, C, D and E were served with notice to repair the property under the usual repairing covenant, and the lease expired last June. In July, 1933, the union resolved that it should be dissolved, and some days later the landlord commenced an action for breach of the repairing covenant against C, D and E. The registration of the union has since been cancelled, and we are informed that the union had no funds whatsoever at that time. C, D and E claim that they are not personally liable for breaches of the covenant in the lease because of s. 10 of the Trade Union Act, 1871. We do not know whether a formal assignment of the lease to D and E was ever made, but they were in possession when the notice was served. Will you please advise whether (i) C or (ii) C, D and E is or are personally liable for breaches of the repairing covenant.

*A.* Section 10 has no application whatever to such a case. Section 9 specifically deals with actions against the trustees in respect of property, and s. 4 of the Trades Disputes Act, 1906, expressly reserves the rights under s. 9 of the Act of 1871, though in fact s. 4 of the Act of 1906 does not apply at all to an action on a contract, such as a covenant in a lease. If D and E were the properly appointed trustees in the place of A and B the lease vested in them and C by virtue of s. 8 of the Act of 1871 and C, D and E were liable as assignees for breach of covenant committed during the time they held the property, which, as breach of repairing covenant is a continuing one, means they are liable to make good the breach.

# In Lighter Vein.

THE WEEK'S ANNIVERSARY.

The story of Thomas Clarke shows how far a helping hand can lead. He was the son of a carpenter in the then disreputable slum of St. Giles, Holborn; his mother kept a pawnbroker's shop. However, the Dean of Westminster took an interest in the boy and got him admitted to St. Peter's College. With this start, Clarke went on to Cambridge and Gray's Inn, where he was called to the Bar. The good Dean, following up his kindness, introduced him to Lord Macclesfield, formerly Chancellor, who, in his turn, took such an interest in him that a rumour got about that the young man was his son. This powerful friend recommended him to Sir Philip Yorke, afterwards Lord Chancellor Hardwicke, and thereafter his career was assured. He took silk in 1740, entered Parliament in 1747 and was appointed Master of the Rolls in 1754. Two years later, on the resignation of his patron, Lord Hardwicke, the Chancellorship was within his reach, but he refused it. He died on the 13th November, 1764, leaving a fortune of £200,000, most of which went to the third Earl of Macclesfield, grandson of his benefactor. He also left £30,000 to St. Luke's Hospital. Some doubt was attempted to be thrown on the soundness of his mind, but his will was not contested. He was buried in the Rolls Chapel.

THE STILL, SMALL VOICE.

Soft peace descended on the great "sunshine roof" case when a witness appeared who spoke so low as to be almost inaudible. "Don't you ever have to shout at somebody in the workshops?" asked Pritt, K.C. "Not often." "Do you ever go to see Aston Villa play Birmingham?" suggested Hawke, J. "I am not interested." So the court had to accept the witness's vocal chords as they were, though evidence given pianissimo has enraged many a good judge. "Witness, for the sake of God and your expenses do speak out!" Maule, J., once exclaimed to a persistent mumbler. At the Liverpool Assizes, Rowlatt, J., experiencing similar difficulty, urged the offenders to speak out, adding: "If they refuse to use the voice which God has given them, I shall have to put them up in the gallery where they will be obliged to speak out. The public are here to hear prisoners tried and they have a perfect right to hear all the evidence." Serjeant Arabin as Common Serjeant was even more desperate. To one low-voiced lady he exclaimed "You come here with your head in a false wig. If you can't speak out, I'll take off your bonnet. If that won't do, I'll take your cap off, and if you don't speak out then, I'll take your hair off."

TO SWEAR OR NOT TO SWEAR.

It was rather naive of the witness whom the judge at the Reichstag fire case ordered to be arrested for alleged perjury to tell the court that he did not know he was on his oath, especially as before commencing to give evidence he had asked if he might swear a simple oath without reference to God. The idea that a particular form of oath imposes a higher duty with regard to veracity is well-established in the traditions of the law courts. Thus, the Highlanders used not to regard the Lowland oath as imposing any binding obligation. Once at the Carlisle Assizes, a Highland cattle drover prosecuted an enemy of his on a charge of horse stealing and swore positively to the fact. Seeing this, the accused asked the judge that the prosecutor might be sworn in the Highland manner, but this oath being tendered, he refused to take it, observing that "there is a hantle of difference betwixt blowing on a book and damning ane's ain soul." In Ireland, it used to be a favourite evasion for the witness to kiss his thumb instead of kissing the book. It was on detecting one of these that Phillips, an Irish judge, exclaimed: "You may think to deceive God, sir, but you won't deceive me."

# Notes of Cases.

## High Court—King's Bench Division.

**Isaac Modiano Brothers and Son** *v.* **F. D. Bailey & Sons Ltd.**

Branson, J. 31st October, 1933.

BILL OF LADING—FREIGHT CLAUSE—BARLEY CARGO—BASIS OF POUND STERLING EQUAL TO U.S.A. DOLLARS GOLD—GOLD STANDARD ABANDONED—EXCESS ON FREIGHT—PAYABLE BY BUYERS—BUYERS NOT AGENTS OF SELLERS.

This was an award in the form of a special case stated by the Appeal Committee of the London Corn Trade Association.

By a contract in the form of the association's contract made on the 30th March, 1933, the respondents, F. D. Bailey and Sons, Ltd., sold to the appellants, Isaac Modiano Brothers and Son, a quantity of Chilean barley on c.i.f. terms, at 20s. 6d. a ton, including freight and insurance. Delivery was to be made at Antwerp, and freight was to be payable on discharge at that port. The barley was shipped on a Norwegian steamer under a bill of lading, dated the 31st March, 1933, which contained a freight clause as follows: "Freight and charges 22s. 6d. per ton of 1,000 kilos payable at destination. Freight collect on basis of pound sterling equal 84.86 U.S. gold: shipowners to have option of collecting U.S. dollars or their own country's currency at ruling rate of exchange for U.S. gold dollars." The United States abandoned the gold standard on the 19th April, 1933. In due course the steamer arrived at Antwerp, and completed discharge on the 11th May, 1933. The buyers paid the freight on delivery as provided by the contract, but the shipowners refused to deliver unless a sum in Belgian francs equal to £49 was paid in addition to the sum which the buyers contended was due. In order to obtain their goods the buyers paid the shipowners the excess under protest, and in the arbitration the buyers sought to recover the sum from the sellers. The appeal committee awarded in favour of the sellers, and the buyers now appealed.

BRANSON, J., said that it was contended by the buyers that they, acting as agents for the sellers, were entitled to be indemnified for the course which they reasonably took. To establish that position the buyers must show that they were in fact agents for the sellers, and that, in his opinion, they could not do. The buyers were indorsees of the bill of lading, and as such became assignees of the contract of affreightment. As between them and the sellers they undertook to pay the freight reserved by the bill of lading whatever it might be. In discharging the liability to pay freight under the bill of lading the buyers were acting for themselves and not for the sellers, and the claim based on the ground of agency failed. The claim also failed on the further ground that if the buyers made the extra payment when it was not in fact due they made it under a mistake of law. With regard to the construction of the bill of lading his lordship held that the amount which the shipowners were entitled to recover for freight was £275 and not £324, which the buyers had mistakenly paid, and the buyers could not in any event recover the difference from the sellers.

COUNSEL: *David Davies*, for the appellants; *Gething*, for the respondents.

SOLICITORS: *Ballantyne, Clifford & Co.*; *Thomas Cooper and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

**Drew** *v.* **Dingle.**

Lord Hewart, C.J., Avory and Lawrence, JJ.

2nd November, 1933.

MOTOR VEHICLE—CARRIAGE OF PASSENGERS AND THEIR PRODUCE TO MARKET—INCLUSIVE CHARGE—FARES FOR PASSENGERS—LORRY USED AS "EXPRESS CARRIAGE"—UNLICENSED—DIRECTION TO CONVICT.

This was an appeal by way of case stated from a decision of the justices at Saltash, Cornwall.

The appellant, Police Superintendent James Henry Drew, who was duly authorised under the Road Traffic Act, 1930, preferred two complaints against the respondent, Ernest Dingle, charging him (1) with having on the 31st December, 1932, unlawfully used a motor vehicle as an express carriage, not being the holder of a public service vehicle licence to use it as a vehicle of that class, contrary to s. 67 of the Road Traffic Act, 1930; and (2) with using the same vehicle on the same occasion as an express carriage, not being the holder of a road service licence to use it as a vehicle of that class, contrary to s. 72 of the Act. At the hearing of the informations the following facts were proved or admitted: On the 31st December, 1932, when the respondent was at Saltash driving his motor lorry and carrying in it a quantity of market produce and five passengers, he was stopped by a police constable. The passengers were the owners of some of the market produce which was being carried by the respondent, and were accompanying their produce to the market. Two of the passengers paid the respondent 10s. for the conveyance of their produce and themselves; two others paid him 7s. for the conveyance of themselves and their produce, and the fifth 5s. 3d. for the same purpose. The respondent held neither a public service vehicle licence nor a road service licence for the lorry. The justices were of opinion, in so far as it was a question of fact, that the payment of one sum to cover the conveyance of both the passengers and their goods did not constitute the conveyance of passengers at separate fares, and that no separate fares were charged in respect of the passengers, and that the lorry was a vehicle ordinarily used for the purposes of agricultural trade and not adapted for carrying eight or more passengers, and they accordingly dismissed the informations.

Lord HEWART, C.J., said that the respondent had been charged with using the lorry as an express lorry, and he, his lordship, thought that that clearly was so. Fares were paid for the passengers, and he, his lordship, thought that it was quite immaterial that they carried their market produce with them. The case should go back to the justices with a direction that the offence charged had been proved.

AVORY and LAWRENCE, JJ., gave judgment to the same effect.

COUNSEL: *Wilfrid Lewis*, for the appellant; *Dingle Foot*, for the respondent.

SOLICITORS: *The Treasury Solicitor*; *Foot, Bowden and Blight*, Plymouth.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

### Societe Anonyme Metallurgique de Prayon, Trooz, Belgium *v.* Koppel.

Roche, J. 2nd November, 1933.

BILL OF EXCHANGE—DRAWN, ACCEPTED AND PAYABLE IN GERMANY—REMEDY BARRED IN THREE MONTHS BY GERMAN LAW—RIGHTS NOT EXTINGUISHED—NO LIMITATION IN OPERATION BY ENGLISH LAW.

In this action the plaintiffs, a company carrying on business at Trooz, Belgium, claimed against the defendant, Leon Koppel, for the sum of £333 3s. 3d. due under a bill of exchange, dated the 7th December, drawn by the defendant in Berlin on a German company and payable in Berlin on the 3rd March, 1932, to the drawer's order. The bill was endorsed by the defendant, and the plaintiffs were the holders for value of the bill, which was duly presented for payment in Berlin on the 5th March, 1932, and was dishonoured. They accordingly brought the present action. The defendant alleged that even if the plaintiffs were the holders for value as alleged, they had no claim whatever against him, because under the provisions of the German law the claims of a holder against a drawer and endorsee of a bill of exchange lapsed in three months from the date of protest being made, and that inasmuch as the bill was protested on the 5th March, 1932, the plaintiffs' claim, if any, lapsed on the 5th June, 1932.

ROCHE, J., said that it was contended that by German law the rights of the plaintiffs against the defendant terminated within three months of the date of protest. The main question in controversy was whether the German law of limitation applicable extinguished the rights of the party suing, or whether it merely barred or interfered with his remedy. He (his lordship) had arrived at a clear opinion, on the weight of authority, that the present effect of German law was that under a document such as the one in issue the rights of the party were not extinguished, but the remedy was barred. What, then, was the result of that finding in English law? In that matter his decision was fixed by two old authorities: *Huber* v. *Steiner*, 2 Scott, 304, and *Harris and Adams* v. *Quine*, L.R. 4 Q.B., 653. It was clear from those authorities that English law regarded the law of limitation as a matter of procedure, and the English courts were unable to apply any law of procedure other than the law of England. It was clear that by the law of England there was no statute of limitation in operation against the plaintiffs, and there was nothing to prevent them from recovering. Judgment for the plaintiffs.

COUNSEL: *H. O'Hagan*, for the plaintiffs; *Phineas Quass*, for the defendant.

SOLICITORS: *Donald McMillan & Mott*; *Teff & Teff*.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## TABLE OF CASES previously reported in current volume—Part II.



# Rules and Orders.

THE SUPREME COURT FUNDS (NO. 2) RULES, 1933. DATED OCTOBER 25, 1933.

I, the Right Honourable John Viscount Sankey, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925,(*) and every other power enabling me in this behalf, hereby make the following Rules:—

1. The words "or pleading," shall be deleted from Rule 32 (1), in each place where they occur.

* 15–6 G. 5, c. 49.

2. In Rule 43,—(*a*) the words " in satisfaction " shall be inserted after the words " to appropriate " ; (*b*) the expression " Rule 8 " shall be substituted for the expression " Rule 11 " ; and (*c*) the words from " and whether so appropriated " down to " have been tendered," inclusive, shall be deleted.

3. Paragraphs (1) and (2) of Rule 44 shall be revoked and the following paragraphs shall be substituted therefor :—

" 44.—(1) When money has been lodged in satisfaction of a claim under Order XXII of the Rules of the Supreme Court, and when and so far as money lodged under Order XIV has been appropriated in the manner provided in the last preceding Rule, payment shall (except in cases relating to infants or persons of unsound mind) be made by the Accountant-General to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, within the time limited by Order XXII, Rule 2, and upon a request or authority for payment of the same ; such notification and request or authority to be in the Form No. 35, 36 or 37, or as nearly may be :

Provided that no payment shall be made under this Rule in any case (*a*) where an Order has been received restraining such payment, or (*b*) where a defence of tender before action has been pleaded, or (*c*) where money has been lodged by one or more of several defendants.

(2) When a request is made for payment of money lodged in Court on a notice, the original receipt and notice must, whenever so required, be produced at the Pay Office."

4. The following sub-paragraph shall be inserted at the end of paragraph (2) of Rule 67, and shall stand as part of that paragraph :—

" (k) any costs directed to be paid to the Official Solicitor shall be carried over to an account in the Pay Office books entitled ' Official Solicitor's Costs.' "

5. In Forms No. 19 and No. 23—(*a*) the words " or ' with defence setting up tender,' " shall be omitted ; (*b*) the expression " Rule 1 " shall be substituted for the expression " Rule 5 " and for the expression " Rule 6 " ; (*c*) the words " setting up tender " shall be substituted for the words " denying liability."

6. In Form 31—(*a*) the word " satisfaction " shall be substituted for the word " respect," and (*b*) the words from " as under " down to " have been tendered," inclusive, shall be deleted.

7. Forms No. 32, No. 33, and No. 34 are annulled.

8. In Forms No. 35 and 36,

(*a*) the heading shall be deleted and the following heading substituted therefor :

" Rule 44 (1)

A

In the High Court of Justice.

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Request for payment of Money lodged, or appropriated, in satisfaction of claim (under Rule 1 or Rule 8 of Order XXII) " ;

(*b*) the expression " Rule 2 " shall be substituted for the expression " Rule 7 " ; and (*c*) the expression " (As in Form No. 32) " at the foot of the form shall be deleted and the following paragraphs shall be inserted in lieu thereof :

" If remittance by post is desired, the payee (whether plaintiff or solicitor) should fill up and sign the request below, and send the Form, entire, to the Accountant-General, Royal Courts of Justice, W.C.2

Date.....193..

I request that the above sum may be remitted to me, by post at the above address, by cheque crossed to (*insert* " my " *or* " our ").....
account at (*insert name of payee's bank*).....
Bank.

Signature (*in the case of a firm, one partner to sign as above. A firm-signature cannot be accepted*)

.....

A partner in the Firm of.....

.....

9. In Form 37—(*a*) the heading shall be deleted and the following heading substituted therefor :—

" Rule 44 (1)

A

In the High Court of Justice—King's Bench Division.

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Request for payment to a Company of Money lodged, or appropriated, in satisfaction of claim (under Rule 1 or Rule 8 of Order XXII) " ;

(*b*) the expression " Rule 2 " shall be substituted for the expression " Rule 7 " ; and (*c*) the expression " Form No. 35 " shall be substituted for the expression " Form No. 32 " at the foot of the form.

10. These Rules may be cited as the Supreme Court Funds (No. 2) Rules, 1933, and shall come into operation on the 1st day of November, 1933, and the Supreme Court Funds Rules, 1927, as amended,† shall have effect as further amended by these Rules.

11. The Supreme Court Funds (No. 2) Provisional Rules, 1933, dated the 26th day of July, 1933, and now in force, shall continue in force till the 1st day of November, 1933, on which day they shall be superseded and replaced by these Rules.

Dated the 25th day of October, 1933.

*Sankey*, C.

*Austin Hudson*, } Lords Commissioners of His
*James Blindell*, } Majesty's Treasury.

† S.R. & O. 1927 (No. 1184) p. 1368, as amended by S.R. & O. 1931 (No. 459) p. 1239 and 1933, No. 61.

# Parliamentary News.

## Progress of Bills.

### House of Lords.

Road and Rail Traffic Bill.
Read Second Time. [7th November.

### House of Commons.

Electricity Supply Bill.
Read First Time. [7th November.
Expiring Laws Continuance (No. 2) Bill.
Read Third Time. [8th November.
Firearms and Imitation Firearms (Criminal Uses) Bill.
Read Second Time. [8th November.
Local Government Bill.
Read Second Time. [8th November.
Ministry of Health Provisional Order Confirmation (Wellington, Salop) Bill.
Read Second Time. [8th November.
Ministry of Health Provisional Order Confirmation (Worthing) Bill.
Read Second Time. [8th November.
Unemployment Bill.
Read First Time. [8th November.

# Societies.

## The Magistrates' Association.

This Association held its twelfth Annual Conference at the Guildhall on the 25th October.

THE LORD MAYOR (Sir Percy Greenaway), in opening the proceedings, spoke with great regret of the loss of Sir Edward Clarke Hall, the late Chairman of the Association, a few days after the last meeting. He welcomed Sir E. Marlay Samson, K.C., as an understanding successor. The work of magistrates during the past year had, he remarked, been largely occupied in the consideration of the new Children Act. The ideas which had been developing in the twenty-five years that had passed since the " Children's Charter " of 1908, together with the experience of the Association, had been embodied in the new Act. Magistrates were gravely concerned with the number of traffic offences which were brought before them ; they must stick to the rule of judging every case strictly on its merits, refusing to be stampeded by personal criticism or public agitation.

Dr. R. D. GILLESPIE opened a discussion on the medical and psychological aspect of delinquency, and explained that the psychologist aimed not at penalising the delinquent but at canalising his energies into healthy channels.

Dr. HELEN BOYLE, who also spoke, pointed out that prison was a way of shirking life less painful and irrevocable than suicide. A criminal who returned to the community discontented was, she declared, a potential source of damage. The new Act recognised new knowledge and provided new help for the court, but not for investigation by a psychiatrist. She pointed out that the Home Office instructions contained only five lines on medical examination, and she exhorted magistrates, as captains of the ship, to accept the help of the psychiatrist in interpreting the chart of the offender's mind and pointing out the hidden rocks. She quoted a saying that

the seriousness of the offence was not a criterion of the social menace of the offender. Investigation of a person charged for a slight offence might, she said, bring to light tendencies which, if unchecked, would result in serious and violent crime.

DELINQUENCY IN PRACTICE.

Many interesting points were raised in the discussion: Mr. H. E. F. PATEMAN (Cambridge) stressed the necessity for great care in certifying mental defectives, even on the advice of two medical practitioners. Mr. A. D. THORPE (Hastings) asked for information about hereditary taints under the influence of which a person would commit crime irrespective of his surroundings. Sir ROBERT ARMSTRONG-JONES (Carnarvon) mentioned encephalitis lethargica ("sleepy sickness") as a source of juvenile delinquency; he praised prison discipline as an excellent régime for young delinquents and a good training-ground for mental defectives. Mr. T. E. MORRIS (Holborn) said that the whole problem was like that of dealing with malingerers. Mrs. P. E. CUSDEN (Reading) said that Sir Robert's statement that prison was a preventive institution could not be verified by statistics. Once prison became known to the delinquent it lost its power of deterrence. The Mental Treatment Act, 1930, was not being used to anything like the extent it should be, and its facilities for temporary treatment without certification ought to be more widely employed. A lady magistrate from Worthing declared that the town's psychiatric clinic, at which a physician from the mental hospital attended once a week, was most successful and of great use to the local Bench. Mr. G. B. ASH (Weymouth) said that he was impressed by the extraordinary variety or diseases of the mind met with in offenders, and that the longer he lived the less he wanted to punish anyone for anything. He quoted Julian Huxley's saying "At the moment of conception we are given a pack of cards with which we have to play the game of life." This, he said, with Lord Dawson's remark that our pituitary gland governs our destiny, made a magistrate think. Mr. R. H. HANNANT (Bishop Auckland) said that owing to unemployment parents in many families had lost control of their children. The Act would have to be administered more severely than was generally supposed. Children who had once been put on probation came a second time. There might be a psychological moment in the life of a child when the parent should exercise control. If at that moment every parent would apply the rod there would be far less crime in the country. His own five had not been coddled any more than he had, and no harm had come to them.

Mr. CLAUD MULLINS (North London) asked for the medical speakers' experience of the cure, as opposed to the diagnosis, of the sexual offender. To diagnose was easy, but did not help the Bench. In the two years he had been a magistrate every instinct in his system had been offended by the thought of sending certain exhibitionists and homosexuals to jail, but he had to protect the public, and until he could have some assurance that he could get them cured he had no other course. He had sent many cases of this type to two psychological clinics in London and to specialists, but so far he had still to receive that assurance.

Dr. GILLESPIE, in reply, pleaded for greater opportunities of seeing the material with which the magistrate had to deal. Among private patients, he said, a certain percentage of sexual offenders could be treated successfully, but the problem was an economic one. There was very little equipment of any kind in this country for treating such people; treatment to be successful must be long and the money was not there.

The CHAIRMAN stated that magistrates, in administering the new Act, would have to give much more care and study to this branch of the problem than had been given in the past. They would welcome the skilled assistance of the medical practitioner. Calverley had described the young delinquent accurately—

> "He was what nurses call a limb,
> One of those small, misguided creatures
> Who, though their intellects are dim,
> Are one too many for their teachers."

It was the duty of magistrates to see that their young offenders were not one too many for them.

THE NEW JUVENILE COURTS.

In opening the afternoon proceedings, the LORD CHANCELLOR said that under the new Children Act juvenile delinquents would be dealt with only by a panel of specially-selected justices, and it was hoped that the justices who appointed these panels would select the right kind of man and woman: those with knowledge and sympathetic understanding of young people in the walk of life of those who were most likely to come before them. It was impossible to lay down hard and fast rules about the age of magistrates, but he was not disposed to favour the original appointment of old people. The work of juvenile courts was so specialised that they should consist of the most active, wise, patient and sympathetic members of the Bench. He hoped that women would sit on every one of the juvenile courts. The reformation of the young offender was the solution of the problem of the habitual criminal.

The Summary Jurisdiction (Appeals) Act, he continued, revolutionised the system of appeals to quarter sessions. Appeals would no longer be heard while the court was in session, but the committees would probably meet at convenient times throughout the year. A slight increase in appeals might be observed at first, but a useful provision in the Act gave the appeal committee power to increase the sentence imposed by the court of summary jurisdiction. The existence of this power might be an effective deterrent to frivolous appeals.

THE STATE OF CRIME.

Mr. H. R. SCOTT, Chairman of the Prison Commission, read an admirable paper based on research into the Prison Statistics and the police figures for indictable offences. First of all, he pointed out that only 45 per cent. of prison population was criminal, the remainder being debtors, persons who had failed to pay fines, and prisoners who were subsequently acquitted. The figures for indictable offences, therefore, gave a more reliable index to the state of crime than the prison returns. They had risen from 98,000 in the pre-war years to 159,000 in 1931. Part of the increase was statistical—the police heard of more crime—but even so, there was a real increase. Murder and robbery with violence had remained stationary; burglary was a dying industry, but breaking-in by day, simple larceny and false pretences were greatly increased, the former chiefly because the motor car enabled the criminal to go farther afield. The great proportion of young offenders was a serious problem. The Prison Commission looked upon boys' and girls' clubs and playing fields as their outer defences. He condemned the short sentence, because it gave no opportunity for training, interfered with the training of long-sentence prisoners, and increased the criminal proportion of the prison population. Experience of preventive detention was not encouraging.

Mrs. C. D. RACKHAM (Cambridge), after inveighing against the motoring offender and advising magistrates to use their powers of suspending licences, put down much crime in young persons to their neglect by legislation. Many left school at fourteen and worked in totally unregulated occupations; even if they passed into a factory or shop they were allowed to work for sixty and seventy-two hours a week without medical supervision. Overwork, overstrain and lack of leisure were fruitful sources of crime.

Sir VIVIAN HENDERSON, M.P., considered that much crime was due to lack of discipline in the home during and since the war, and to cheap amusement and travel, which slackened the bonds of family life. He pleaded with magistrates to send young offenders to training institutions for a long enough time to enable their teachers to deal with them. He considered that the abolition of the licensing system would be a great mistake, for long-sentence men needed help on discharge as much as in prison. He wished to see the Prisoners' Aid Society work centralised and linked up with the licensing and probation systems.

THE EARL OF FEVERSHAM begged magistrates, when they bound a prisoner over, to instruct the clerk to make a proper supervision order with suitable conditions, to give the probation officer authority over him. When a condition was broken and the probation officer brought the offender up, magistrates should deal with the case seriously. They should devote great care to preliminary investigation: to the police and probation officer's reports there was now added that of the school attendance officer. If magistrates would follow these three requests, he said, they would redeem the probation system from the charge of sentimentality, weakness and over-lenience.

## Incorporated Accountants' Students' Society.

Mr. N. M. G. Faulks, Barrister-at-Law, delivered a lecture on "The General Principles of Income Tax Taxation" before the Incorporated Accountants' Students' Society of London and District at Incorporated Accountants' Hall, Victoria Embankment, London, W.C.2, on Tuesday, 7th November. Mr. M. J. Faulks, M.A., Incorporated Accountant, was in the chair.

Mr. Faulks began with a brief summary of the history of the tax to the present day. He then went on to deal with the scope of the tax, and the proper method of interpretation of the Taxing Acts. After referring to certain decided cases on the distinction between capital and income, he attempted to arrive at a definition of the word "income." Next he dealt with the schedules separately and endeavoured to point out the objects at which each was aimed, and the most

important point to be noted in relation thereto. He then dwelt in some detail on the cases attached to Schedule D, and finally summarised in general the incidence of the schedules. He then answered the question: "Who is liable to tax?" and followed this point with a few remarks on the question of relief and allowances. He then passed to the machinery of assessment, and concluded with a few words on procedure in appeals, with reference to special cases, etc. The point which he tried particularly to stress was that while the Act must be strictly construed as to its wording, the tax is an artificial tax, and, it being impossible to deduce any principle from the Act itself, recourse must be had to the decided cases.

## Gray's Inn Debating Society.

The first meeting of the Michaelmas term was held in the Common Room, Gray's Inn, at 8.15 p.m. on Thursday, 2nd November, the President being in the chair. A debate took place on the motion "That capital punishment ought to be abolished." This motion was proposed by Mr. Vyvyan Adams, M.P. (a visitor), after the President had briefly introduced and welcomed him. It was opposed by Lt.-Col. W. Elliott Batt, C.M.G. (ex-President), Mr. Thomas Terrell spoke third, and Mr. Richard Ellis spoke fourth. On the motion being thrown open to the house, Mr. J. W. J. Cremlyn (ex-President), Mr. W. Gearing Thomas (a visitor) and Mrs. Thomas Terrell (a visitor) spoke in favour of the motion, and Prince Leonid Lieven and Mr. John Wood (Vice-President) against it, after which the proposer replied. The motion was rejected by sixteen votes to nine, the number of members and guests present being forty-two. A hearty vote of thanks to Mr. Adams was proposed by Mr. J. W. J. Cremlyn (ex-President), seconded by Mr. John Wood (Vice-President) and carried by acclamation, to which Mr. Adams briefly replied.

A joint debate of the Society with the University of London Law Society will take place at a meeting of the latter society, which will be held in University College at 8 p.m. on Tuesday, 14th November. The motion will be "That the policy of the present government of Germany is a danger to the peace of the world." This motion will be proposed by Mr. A. Goodman (U. of L.L.S.), and opposed by Mr. H. W. G. Westlake; Mr. A. Neville Abrahams will speak third, and Mr. Rogers (U. of L.L.S.) will speak fourth.

The next meeting of the Gray's Inn Debating Society will be held in the Common Room, Gray's Inn, at 8.15 p.m. on Thursday, 16th November. Particulars are to be found on the Society's notice boards.

The Society will hold a dinner and dance at the Hotel Metropole on Thursday, 30th November. Particulars will be announced in due course.

## Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 7th November (Chairman, Mr. P. W. Iliff), the subject for debate was "That the case of *Vanbergen* v. *St. Edmunds Properties, Limited* [1933] 2 K.B. 223, was wrongly decided." Mr. H. Trott opened in the affirmative; Mr. L. T. Sturge opened in the negative; Mr. C. E. Lloyd seconded in the affirmative; Miss B. H. Alexander seconded in the negative. The following members also spoke: Messrs. J. S. Clarfelt, W. M. Pleadwell, J. H. G. Buller, N. A. M. Sitters, L. J. Frost, H. Peck, K. M. Trenholme, S. Samson, E. W. Muddart, C. J. de S. Root. The opener having replied, and the Chairman having summed up, the motion was lost by six votes.

## University of London Law Society.

At the weekly meeting of the University of London Law Society on Tuesday, 7th November, an illuminating and interesting address was given by Professor J. H. Morgan, M.A., K.C., D.L., on the Indian White Paper.

Taking as an example as showing what endless trouble may arise out of a simple sentence in a clause of the American Constitution, namely, the central legislative chamber at Washington reserving to itself the right "to regulate commerce with foreign nations," that, said the Professor, had already resulted in 2,000 leading cases in the American Law Reports. Australia, which in common with the other British colonies, had formed its constitution on the lines of the American federal government, recorded 500 leading cases. There never had been so vast, intricate, and difficult a constitutional experiment as that which the Government was proposing in the Indian White Paper.

The first thing about the federal constitution was that, however good or bad it might be, it would be a golden harvest for the lawyers. If there were any Indian students present who were contemplating the bar in India, he advised them to put aside their political views, and so count upon a lucrative practice for the rest of their natural lives.

The problem was to bring within the same constitution the autocracy of the native princes with the rest of British India.

At the conclusion a hearty vote of thanks was passed on the motion of the President, Mr. J. C. Hales, LL.B.

## The Law Association.

The usual monthly meeting of the Directors was held at the Law Society's Hall, on Thursday, the 2nd November. Mr. G. D. Hugh-Jones in the chair, acting for Mr. Douglas T. Garrett, Chairman for the year, the other Directors present were:—Mr. Guy H. Cholmeley, Mr. Arthur E. Clarke, Mr. C. D. Medley, Mr. Frank S. Pritchard, Mr. J. E. W. Rider, Mr. John Venning, Mr. William Winterbotham, Mr. W. M. Woodhouse, and the Secretary, Mr. E. E. Barron. A sum of £80 was voted in relief, but in view of the serious deficit in the year's income it was decided to make no further payments until an appeal had been made to the profession to help in the present crisis. A letter of appeal was settled and directed to be sent out on 4th December next, and other general business was transacted.

## United Law Society.

A meeting of the United Law Society was held in Middle Temple Common Room on 6th November. Mr. F. R. McQuown proposed "That in the opinion of this House Germany was not justified in withdrawing from the League of Nations." Mr. H. Everett opposed. Messrs. Burke, Habershon Levy, Bull, Redfern and Plowman spoke, and Mr. McQuown replied. The motion was carried.

## Medico-Legal Society.

ANNUAL DINNER.

The annual dinner will be held at the Holborn Restaurant, London, W.C.1, on Friday, 8th December, 1933, at 7 for 7.15 p.m., when the President (Sir Bernard H. Spilsbury) will be in the chair.

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased to approve the appointment of Mr. T. HOLLIS WALKER, K.C., to be a Commissioner of Assize to go the North and South Wales Circuit (Cardiff). Mr. Walker, who is the Recorder of Derby, was called to the Bar by the Inner Temple in 1886, and took silk in 1910.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to approve the appointment of Mr. ARCHIBALD CAMPBELL BLACK, O.B.E., K.C., to be Sheriff of Stirling, Dumbarton and Clackmannan in the room of the late Mr. James Robert Nicolson Macphail, K.C.

The King has been pleased to approve the appointment of Mr. Justice RAI BAHADUR SURENDRA NATH GUHA as a Puisne Judge of the High Court of Judicature at Calcutta, in the vacancy created by the retirement of Sir Herbert Pearson.

The King has been pleased to approve the appointment of Mr. NAVROJI JEHANGIR WADIA, Indian Civil Service, as a Puisne Judge of the High Court of Judicature at Bombay in the vacancy which will occur on 6th December owing to the retirement of Mr. Justice Baker.

The Home Secretary has appointed Mr. DANIEL BLADES, K.C., Sheriff of Forfarshire, to be legal assessor to the Medical and Dental Tribunals for Scotland, constituted under the Dangerous Drugs (Consolidation) Regulations (1928), in the place of Mr. John Cowan, K.C., who has resigned.

Mr. W. M. R. LEWIS, Clerk to the Doncaster Justices, has been appointed Clerk to the Magistrates at Bath in succession to Mr. E. Newton Fuller, who has retired after forty-two years' service.

## Professional Announcements.

(2s. per line.)

## Wills and Bequests.

Mr. William Hammon Devenish, solicitor, of Bath, left £11,585, with net personalty £11,295.

Mr. Arthur Halsall, solicitor, of Birkenhead, left £13,044, with net personalty £5,000.

Mr. George Lewis, solicitor, of Bushey, Herts, left £7,637, with net personalty £1,473.

Mr. Edward Theodore Alms, solicitor, of Taunton, left £9,198, with net personalty £6,385.

Mr. Herbert Curtis Lee Hanne, solicitor, of Wandsworth, S.W., left £8,043, with net personalty £5,720.

Mr. Matthew Harrison, solicitor, of West Hartlepool, left £8,622, with net personalty £3,122.

Mr. Harry Nye, retired solicitor, of Worthing, left £25,572 (net personalty nil).

### ALLIANCE ASSURANCE COMPANY, LIMITED.

The Alliance Assurance Company announces that, as from the following dates, the undermentioned departments will move to the Company's new premises in Bartholomew Lane, E.C.2, to which address all communications should be sent, namely :—

Accident Department—6th November.
Life Department—13th November.
Fire Department—20th November.

The telephone number for these departments will be London Wall 2345.

### PAID CHAIRMAN OF QUARTER SESSIONS.

At a meeting of the Chiswick Chamber of Commerce held last Tuesday evening, says *The Times*, a discussion was opened by Mr. F. E. Hamer, a Middlesex justice, on the question of appointing a paid chairman and deputy chairman of the Middlesex Quarter Sessions. Mr. Hamer said that the proposal would convert a voluntary post of great distinction, which public men in the past had been proud to hold, into a professional stipendiary post, and the splendid old tradition of the "great unpaid" in the chief two magisterial posts in Middlesex would die with the retirement of Sir Montague Sharpe. By restricting the chair and deputy chair to professional lawyers, they created a new preserve for the legal profession and cut into the very essence of the old magisterial system. It would impose on the county a permanent annual charge of £2,500 at a time when taxes and rates were abnormally heavy—a charge which, if raised by loan at 3½ per cent., would represent a capital loan of over £70,000. If the principle of paid lawyers for quarter sessions were once established, the extension of the principle to petty sessions would probably follow.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP I. MR. JUSTICE EVE. Witness. Part II. | MR. JUSTICE MAUGHAM. Witness. Part I. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Nov. 13 | Andrews | Blaker | Blaker | *Jones |
| ,, 14 | Jones | More | *Jones | *Hicks Beach |
| ,, 15 | Ritchie | Hicks Beach | Hicks Beach | *Blaker |
| ,, 16 | Blaker | Andrews | *Blaker | Jones |
| ,, 17 | More | Jones | Jones | *Hicks Beach |
| ,, 18 | Hicks Beach | Ritchie | Hicks Beach | Blaker |

| DATE. | GROUP I. MR. JUSTICE BENNETT. Non-Witness. | MR. JUSTICE CLAUSON. Witness. Part I. | GROUP II. MR. JUSTICE LUXMOORE. Non-Witness. | MR. JUSTICE FARWELL. Witness. Part II. |
|---|---|---|---|---|
| | Mr. | Mr. | Mr. | Mr. |
| Nov. 13 | Hicks Beach | *More | Ritchie | *Andrews |
| ,, 14 | Blaker | *Ritchie | Andrews | More |
| ,, 15 | Jones | *Andrews | More | *Ritchie |
| ,, 16 | Hicks Beach | *More | Ritchie | Andrews |
| ,, 17 | Blaker | Ritchie | Andrews | *More |
| ,, 18 | Jones | Andrews | More | Ritchie |

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 23rd November, 1933.

| | Div. Months. | Middle Price 8 Nov. 1933. | Flat Interest Yield. £ s. d. | †Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **ENGLISH GOVERNMENT SECURITIES** | | — | | |
| Consols 4% 1957 or after | FA | 110½ | 3 12 5 | 3 6 9 |
| Consols 2½% | JAJO | 74 | 3 7 7 | — |
| War Loan 3½% 1952 or after | JD | 100⅝ | 3 9 7 | 3 9 1 |
| Funding 4% Loan 1960-90 | MN | 111¾ | 3 11 7 | 3 6 5 |
| Victory 4% Loan Av. life 29 years | MS | 110½ | 3 12 5 | 3 8 7 |
| Conversion 5% Loan 1944-64 | MN | 117½ | 4 5 3 | 2 19 7 |
| Conversion 4½% Loan 1940-44 | JJ | 111¼ | 4 0 9 | 2 10 11 |
| Conversion 3½% Loan 1961 or after | AO | 100⅞ | 3 9 5 | 3 9 0 |
| Conversion 3% Loan 1948-53 | MS | 99½ | 3 0 5 | 3 1 1 |
| Conversion 2½% Loan 1944-49 | AO | 93⅜ | 2 13 4 | 3 0 5 |
| Local Loans 3% Stock 1912 or after | JAJO | 86⅞ | 3 9 1 | — |
| Bank Stock | AO | 349½ | 3 8 8 | — |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 79 | 3 9 7 | — |
| India 4½% 1950-55 | MN | 108¾ | 4 2 9 | 3 15 9 |
| India 3½% 1931 or after | JAJO | 87½ | 4 0 0 | — |
| India 3% 1948 or after | JAJO | 75 | 4 0 0 | — |
| Sudan 4½% 1939-73 | FA | 111 | 4 1 1 | 2 3 2 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 108 | 3 14 1 | 3 7 6 |
| Transvaal Government 3% Guaranteed 1923-53 Average life 12 years | MN | 100 | 3 0 0 | 3 0 0 |
| **COLONIAL SECURITIES** | | | | |
| *Australia (Commonw'th) 5% 1945-75 | JJ | 111 | 4 10 1 | 3 16 9 |
| *Canada 3½% 1930-50 | JJ | 101 | 3 9 4 | — |
| *Cape of Good Hope 3½% 1929-49 | JJ | 101 | 3 9 4 | — |
| Natal 3% 1929-49 | JJ | 96 | 3 2 6 | 3 6 11 |
| New South Wales 3½% 1930-50 | JJ | 99 | 3 10 8 | 3 11 7 |
| *New South Wales 5% 1945-65 | JD | 108½xd | 4 12 2 | 4 1 9 |
| *New Zealand 4½% 1948-58 | MS | 108 | 4 3 4 | 3 15 0 |
| *New Zealand 5% 1946 | JJ | 111 | 4 10 1 | 3 16 8 |
| *Queensland 4% 1940-50 | AO | 102 | 3 18 5 | 3 13 5 |
| *South Africa 5% 1945-75 | JJ | 114 | 4 7 9 | 3 11 0 |
| *South Australia 5% 1945-75 | JJ | 110 | 4 10 11 | 3 18 9 |
| *Tasmania 3½% 1920-40 | JJ | 101 | 3 9 4 | — |
| Victoria 3½% 1929-49 | AO | 99 | 3 10 8 | 3 11 8 |
| *W. Australia 4% 1942-62 | JJ | 102 | 3 18 5 | 3 14 2 |
| **CORPORATION STOCKS** | | | | |
| Birmingham 3% 1947 or after | JJ | 86 | 3 9 9 | — |
| *Birmingham 4½% 1948-68 | AO | 112 | 4 0 4 | 3 9 3 |
| *Cardiff 5% 1945-65 | MS | 111 | 4 10 1 | 3 16 9 |
| Croydon 3% 1940-60 | AO | 94 | 3 3 10 | 3 7 1 |
| *Hastings 5% 1947-67 | AO | 113 | 4 8 6 | 3 14 4 |
| Hull 3½% 1925-55 | FA | 99 | 3 10 8 | 3 11 4 |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 100 | 3 10 0 | — |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 73xd | 3 8 6 | — |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 86xd | 3 9 9 | — |
| Manchester 3% 1941 or after | FA | 86 | 3 9 9 | — |
| Metropolitan Consd. 2½% 1920-49 | MJSD | 93xd | 2 13 9 | 3 1 3 |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 88 | 3 8 2 | 3 9 2 |
| Do. do. 3% "B" 1934-2003 | MS | 89 | 3 7 5 | 3 8 4 |
| Do. do. 3% "E" 1953-73 | JJ | 95 | 3 3 2 | 3 4 6 |
| Middlesex C.C. 3½% 1927-47 | FA | 102 | 3 8 8 | — |
| Do. do. 4½% 1950-70 | MN | 113 | 3 19 8 | 3 9 5 |
| Nottingham 3% Irredeemable | MN | 85 | 3 10 7 | — |
| *Stockton 5% 1946-66 | JJ | 112 | 4 9 3 | 3 16 2 |
| **ENGLISH RAILWAY PRIOR CHARGES** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 104½ | 3 16 7 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 121½ | 4 2 4 | — |
| Gt. Western Rly. 5% Preference | MA | 105½ | 4 14 9 | — |
| ‡L. & N.E. Rly. 4% Debenture | JJ | 100 | 4 0 0 | — |
| ‡L. & N.E. Rly. 4% 1st Guaranteed | FA | 91½ | 4 7 5 | — |
| ‡L. Mid. & Scot. Rly. 4% Debenture | JJ | 101½ | 3 18 10 | — |
| ‡L. Mid. & Scot. Rly. 4% Guaranteed | MA | 94½ | 4 4 8 | — |
| Southern Rly. 4% Debenture | JJ | 104 | 3 16 11 | — |
| Southern Rly. 5% Guaranteed | MA | 118½ | 4 4 5 | — |
| Southern Rly. 5% Preference | MA | 105½ | 4 14 9 | — |

* Not available to Trustees over par.
† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.
‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.